East Texas Motor Freight *and* William T. Weed *and* Johnie L. Fink

International Brotherhood of Teamsters, Dallas General Drivers, Warehousemen and Helpers, Local 745 *and* Archie Elliott Brown *and* William T. Weed

Dallas General Drivers, Warehousemen and Helpers, Local 745, affiliated with International Brotherhood of Teamsters, Chauffeurs and Helpers of America *and* Hall E. Nichols. Cases 16-CA-7132, 16-CA-7430, 16-CA-7825, 16-CB-1380, 16-CB-1402, 16-CB-1408, 16-CB-1255, 16-CB-1267, 16-CB-1403, 16-CB-1422, and 16-CB-1279

July 14, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On October 5, 1979, Administrative Law Judge James W. Mast issued the attached Decision in this proceeding. Thereafter, Respondent Dallas General Drivers, Warehousemen and Helpers, Local 745, herein Respondent Union, filed exceptions and a supporting brief and Respondent East Texas Motor Freight, herein Respondent Company, filed an exception by way of a "Motion for Clarification in Form of Notice." Further, Charging Party Weed filed exceptions and a supporting brief and Charging Party Brown filed exceptions and a letter in lieu of a brief. Respondent Company filed an answering brief to Charging Party Weed's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge, as modified herein, and to adopt his recommended Order, as modified.

1. Contrary to the Administrative Law Judge, we find that Respondent Company violated Section 8(a)(1) by denying employee William Weed the right to post intraunion political literature on the company bulletin board.

Weed had written to President Carter complaining of harassment and unlawful practices by the Union and the failure of the Department of Labor to protect his rights. On March 31, Weed received a letter from the Department of Justice acknowledging his letter to President Carter and stating that his letter was being referred to the local United States attorney.

Weed posted the letter and two newsletters which had been published by Archie Brown, a union dissident and a Charging Party in this case, on the company bulletin board. Terminal Manager Ted Lane removed the leaflets and letter, and shortly thereafter had a supervisor bring Weed to his office. Lane explained that no one had authorization to put any outside documents on the company bulletin board. Lane stated that this policy "held true" for everyone and that no one was permitted to post any unauthorized material on the bulletin board. He further stated that the contract provided that the Union could use the bulletin board but that Respondent Company did not allow outside people to utilize it. Following the meeting Lane issued Weed a warning letter because he "placed three copies of an outside publication on [the] company bulletin board." He further cautioned Weed, "You are not to post any document on [the] company bulletin board without my authorization. This is disruptive to the conduct of our business." Furthermore, Weed was warned, "a recurrence of this or any other acts that disrupts [sic] the conduct of our business will result in disciplinary action and/or discharge."

The Administrative Law Judge found that in this case, as distinguished from the usual no-distribution rule, the bulletin board was the subject of collective bargaining and, as such, only information on union business legitimately related to enforcement of the contract was authorized to be posted on the bulletin board. The Administrative Law Judge found that policy consistent with the contractual provision limiting posting on the bulletin board to official union business and with the fact that there was no evidence that intraunion political propaganda supporting the incumbents in Local 745 had been posted. However, the Administrative Law Judge also found that death notices, flower collection notices, and thank you notes were regularly posted on the bulletin board.

The Administrative Law Judge concluded that Respondent Company had a duty, in an intraunion political situation, to treat the competing groups evenhandedly but had no duty to affirmatively provide both groups with a forum for their intraunion political activity. He reasoned that, in the absence of evidence that Respondent Company allowed the intraunion incumbents the use of the bulletin board to communicate their views to the members of the

[1] Respondent Union has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Union, the "doctrine of balancing and fairness" did not require Respondent Company to make the bulletin board available to the minority for that purpose.

Weed excepted to the Administrative Law Judge's findings claiming that Respondent Company had instituted an overly broad no-distribution rule. Weed contends that the bulletin board in fact was used by employees generally to post all manner of notices such as cars for sale, birthday greetings, thank you notes, and death announcements, and that the rule was applied discriminatorily with respect to him. On the other hand, Respondent Company argues that the undisputed evidence in the case comports with the Administrative Law Judge's finding that Respondent Company adhered to the terms of the collective-bargaining agreement in allowing the posting of union notices "legitimately related to the enforcement of the contract," and that prohibitions against the posting of "intraunion political material" were part and parcel of an evenhanded restriction of the posting of "outside materials" calculated to disrupt the orderly conduct of Respondent Company's business.

We find merit in Weed's exceptions. The bulletin board was located in the employees' breakroom. It was commonplace for employees to post various personal notices despite Respondent Company's contention that use of the bulletin board was limited to "official Union business." Clearly, Respondent Company permitted employees to use the bulletin board but denied Weed the right to advertise his union activities on the bulletin board.

It is well settled that a no-distribution rule, valid on its face, may be unlawful if promulgated or enforced in a discriminatory manner. Respondent Company promulgated its rule at a time of intense intraunion political activity, applied the rule to the leading union dissident, and obviously permitted solicitation of other kinds on the bulletin board. Therefore, we conclude that Respondent Company enforced the otherwise legitimate contractual limitation on use of the bulletin board in a disparate manner in violation of Section 8(a)(1) of the Act.[2] We further find that the March 31 warning letter issued to Weed in connection with Respondent Company's disparate enforcement of the contractual limitation on use of the bulletin board violates Section 8(a)(1).[3]

2. The Administrative Law Judge found that Respondent Union violated Section 8(b)(1)(A) of the Act on May 1, 1977, when employees Weed and Nichols were attacked in Respondent Union's parking lot while on their way to Respondent Union's regular monthly meeting, and on June 5, 1977, when Nichols was assaulted in the same lot on his way to another union meeting. Respondent Union contends, *inter alia*, that no agent of Respondent Union participated in or instigated these assaults and therefore it should not be held accountable. We find merit to its contention concerning the May 1 incident but affirm the Administrative Law Judge's finding with respect to the events of June 5, albeit for reasons different from those set forth by the Administrative Law Judge.

With respect to the May 1 attack on Weed and Nichols, the facts show that they came to the meeting in Weed's van. After parking on an access road they entered the union parking lot and walked toward the union hall. As they proceeded through the parking lot they passed two unidentified men who were standing at the rear of a pickup truck. At that point there was an altercation. The fight occurred in view of a number of unidentified persons. Both Weed and Nichols were knocked down more than once. At the time of the fight, Moore, Respondent Union's business agent, stood toward the opposite end of the block. None of the spectators attempted to intervene in the fight or to stop it. After a short time, Weed and Nichols retreated; the other two men ran toward the union hall but the evidence does not show if they entered the hall or where they went.

The Administrative Law Judge found, and we agree, there was no evidence that Respondent Union or any of its agents participated in, conspired, instigated, or incited any attack on Weed and Nichols. He further found, and we agree, that none of Respondent Union's agents present during the fight knew who was committing the assault or who was being assaulted and could not be faulted

[2] See *Container Corporation of America*, 244 NLRB 318 (1979); *Arkansas-Best Freight System, Inc.*, 257 NLRB 420 (1981).

[3] We find it unnecessary to determine whether this warning letter also violates Sec. 8(a)(3) as alleged inasmuch as the remedy would remain the same.

We note that Weed's discharge letter of August 12 cited his previous warnings including that of March 31, which we have found to be violative of Sec. 8(a)(1). This is clearly a *prima facie* showing that Respondent Company had an unlawful motive for discharging Weed. However, we find that Respondent Company proved it would have discharged Weed even in the absence of the protected activity for which Weed received the unlawful warning cited in his discharge letter. We agree with the Administrative Law Judge's finding that there was a long history of problems with Weed because of his propensity to engage in discussion while he was working; that Weed was issued numerous lawful warnings, three of which were cited in his letter of discharge; and that, on August 9, Weed knowingly violated Respondent Company's lawful policy on solicitation in work areas on company time. Accordingly, we find that Respondent Company did not violate Sec. 8(a)(3) of the Act by discharging Weed. See *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

In view of our conclusion that Respondent Company did not unlawfully discharge Weed, we find it unnecessary to pass on the Administrative Law Judge's discussion of the *Spielberg* doctrine. *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955).

for their failure to act.[4] These findings notwithstanding, the Administrative Law Judge concluded that Respondent Union violated Section 8(b)(1)(A) by failing to attempt to identify the two men who fought with Weed and Nichols, to establish who was the aggressor, and to prevent future violence. Citing *Miranda Fuel Company, Inc.*,[5] and *Scofield* v. *N.L.R.B.*,[6] the Administrative Law Judge reasoned that a collective-bargaining agent's duty of fair representation, coupled with the "overriding policy of labor laws," imposes a duty upon the union to guarantee freedom of participation in internal union affairs, including taking reasonable steps to insure individual safety and security of the meeting hall and the immediate area. We disagree. Neither our development of the doctrine of the duty of fair representation nor the Supreme Court's pronouncement in *Scofield, supra*, provides the basis for placing such a broad, affirmative duty upon a union which has been found to have had no part in an incidence of violence involving union members outside a union meeting hall.

In *Scofield*, the Supreme Court was presented with the question as to whether a union restrained or coerced employees in the exercise of their right to refrain from engaging in concerted activity by imposing fines upon its members for failing to comply with a union rule limiting the production for which piecework pay would be accepted. The Court stated:

> [I]f the rule invades or frustrates an overriding policy of the labor laws the rule may not be enforced, even by fine or expulsion, without violating § 8(b)(1).[7]

Conversely, the Court stated,

> § 8(b)(1) leaves a union free to enforce a properly adopted rule which . . . impairs no policy Congress has imbedded in the labor laws . . . .[8]

Thus, the Court set forth a standard for determining the lawfulness of actions taken by a union to enforce internal rules. This standard places a *limitation* on such internal union action, requiring that it not frustrate or impair the policy of labor laws. It in no way places an absolute *obligation* on unions to *take* actions to further the policy of the labor laws. Indeed, the imposition of such an obligation, absent any showing of union misconduct, would itself be against the congressional policy not to interfere with the internal affairs of unions, aside from regulations affecting employment status.[9]

Similarly, the Board's doctrine of the duty of fair representation is focused upon limiting certain actions of a union in light of powers conferred on the union as a statutory representative under the Act. Thus, in discussing the obligations of a statutory representative, the Board stated:

> [W]e are of the opinion that Section 7 thus gives employees the right to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent in matters affecting their employment. This right of employees is a statutory limitation on statutory bargaining representatives, and we conclude that Section 8(b)(1)(A) of the Act accordingly prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair.[10]

In the absence of any action or failure to take action based upon unlawful considerations, no obligation is placed upon the union to take actions in furtherance of employees' Section 7 rights.

Applying these principles to the case at bar, we find no violation of the Act in Respondent Union's failure to attempt to identify the two men who fought with Weed and Nichols on May 1, or in its failure at that time to insure the individual safety of its members or the security of the union meeting hall and the immediate area. As noted above, there is no evidence that Respondent Union had any part in the attack on Weed and Nichols. Nor is there evidence that the union agents present at the May 1 incident knew the two men fighting with Weed and Nichols, or were at fault for failing to attempt to stop an altercation of such short duration. In these circumstances, we find that Respondent Union's inaction is not proscribed by Section 8(b)(1)(A).

The June 5 incident, however, involves different facts which compel a different conclusion. On that date, Respondent Union held its regular monthly meeting at the union meeting hall. The Dallas Police Department was alerted to the possible occurrence of a dangerous event at the meeting.[11]

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[4] He noted that Moore was at some distance from the fighters and that the fight was of brief duration.

[5] 140 NLRB 181 (1962).

[6] 394 U.S. 423 (1969).

[7] *Id.* at 429.

[8] *Id.* at 430.

[9] *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co. et al.*, 388 U.S. 175 (1967).

[10] *Miranda Fuel Company, Inc.*, 140 NLRB at 185. Member Fanning adheres to his dissent in that case and thus in any event would not find the Board's decision therein dispositive of this issue.

[11] The Administrative Law Judge concluded that the police were alerted by someone calling on behalf of Weed, Nichols, and Brown, who, as noted previously, is a union member and a Charging Party herein.

Pursuant to the alert, police officer Herron arrived in a marked police car shortly before the union meeting was scheduled to begin. He parked opposite the door to the union meeting hall. Nichols walked up to the police car and initiated a conversation with officer Herron. Jack Tucker, a union steward, then came up to Nichols and said that Nichols was not going to attend the union meeting. Officer Herron told Nichols to sit in the police car and close the door. As Nichols attempted to sit in the car, Tucker pushed the car door against Nichols' leg, and, when the door sprang back, Tucker pushed it again. Officer Herron called for assistance and arrested Tucker when Sergeant Smith arrived in response to Herron's call. Nichols and the employees who had come with him then left the area, making no further attempts to attend the union meeting. After the incident, Respondent Union took no action to reprimand Tucker or prevent him from further intimidation of union members.

It has long been held that Section 7 guarantees to employees the right to question the wisdom of their representative or to take steps to align their union with their position,[12] and that a union violates Section 8(b)(1)(A) when it restrains or coerces employees in the exercise of that right.[13] On June 5, employee Nichols was attempting to exercise his protected right to attend the union meeting and question the positions taken by his representative. Union steward Tucker's comment to Nichols that he could not attend the meeting, coupled with his assault of Nichols, clearly restrained and coerced Nichols in the exercise of his protected rights. Although the Administrative Law Judge found, and we agree, that Tucker was not acting as an agent of Respondent Union when he engaged in such conduct, Respondent Union's subsequent failure to reprimand Tucker or make any effort to prevent him from engaging in such conduct in the future constituted a condonation of Tucker's actions against Nichols.[14] Accordingly, we find that, by so failing to act in connection with the June 5 incident, Respondent Union violated Section 8(b)(1)(A).

3. On February 21, 1978, dissident union members Brown and Weed went to the Yellow Freight terminal in Dallas. Yellow Freight employees are represented by Local 745 under the Teamsters master agreement. Their purpose in going to the terminal was to distribute leaflets to the employees which dealt with intraunion matters of Local 745. The Administrative Law Judge found that the events which transpired at the terminal were as follows: B. Baker, an employee and union steward at Yellow Freight, approached Brown, asked what "he was putting out," and reached for a copy with his left hand. Baker put his hand on the leaflets, and at or about that moment some unidentified person standing to the right of Baker struck Brown on the left side of his face. Brown was stunned by the blow and fell to the floor while Baker was left holding the leaflets. Baker then went to Weed, who was trying to open an exit door, and told him "that he'd better get his friend up and get out." Brown and Weed then left the premises.

The Administrative Law Judge found that Baker did not instigate or participate in the assault on Brown. He further found that the attack was a spontaneous reaction of a person opposed to Brown and that, even though it appeared to have been as a result of Brown's intraunion activities, it was not directed by Baker. He therefore concluded that Respondent Union could not be responsible for the assault merely because it was witnessed by a union steward. The Administrative Law Judge noted, however, that "[I]f it could be concluded that B. Baker instigated or participated in the assault, there might be a basis for making the Union responsible."

Brown excepted to certain findings of the Administrative Law Judge and alleges, *inter alia*, that Baker, chief union steward, was found guilty in court for the above assault and that the Administrative Law Judge would not allow him to enter the judgment into evidence. Brown further asserts that Baker not only instigated the assault, but, in fact, held him while Louis Chapman, alternate union steward, struck him.

The evidence reveals that Baker was tried in the municipal court of the city of Dallas for assaulting Brown. The Administrative Law Judge refused to

[12] *Nu-Car Carriers, Inc.*, 88 NLRB 75 (1950), enfd. 189 F.2d 756 (3d Cir. 1951), cert. denied 342 U.S. 919 (1952).

[13] *Roadway Express, Inc.*, 108 NLRB 874 (1954), enfd. *sub nom. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 823*, 227 F.2d 439 (10th Cir. 1955).

[14] See, e.g., *Teamsters Local 783, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Coca-Cola Bottling Company of Louisville)*, 160 NLRB 1776 (1966), where misconduct and violence occurred in the course of a union-authorized strike. The union did not direct the wrongful conduct nor did its leaders participate in it or themselves observe it. In that case, as in the instant case, the union argued that, under principles of agency, it should not be held responsible for acts which it did not direct or in which it did not participate. However, the Board found a violation of Sec. 8(b)(1)(A) based on the fact that the union knew of the acts of misconduct and violence but took no steps reasonably calculated effectively to stop such acts. See also *Service Employees International Union, Local No. 50, AFL-CIO (Our Lady of Perpetual Help Nursing Home, Inc.)*, 208 NLRB 117 (1974); *Dover Corporation, Norris Division*, 211 NLRB 955 (1974).

Member Fanning agrees that Respondent Union violated Sec. 8(b)(1)(A) for the reasons discussed above, and finds the cases cited by the Administrative Law Judge regarding the duty of fair representation and internal union affairs inapposite here.

admit into evidence the disposition of that case even though the General Counsel alleged that it would corroborate what happened. Contrary to the Administrative Law Judge, we find that such evidence is probative of the issue of who assaulted Brown on February 21, 1978, at Yellow Freight. We therefore sever that part of the case and remand that aspect of the case for further hearing to determine whether Baker participated in the assault on Brown and instruct the Administrative Law Judge to admit into evidence the disposition of the above municipal court proceeding.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that Respondent East Texas Motor Freight, Dallas, Texas, its officers, agents, successors, and assigns, and Respondent Dallas General Drivers, Warehousemen and Helpers, Local 745, affiliated with International Brotherhood of Teamsters, Chauffeurs and Helpers of America, Dallas, Texas, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraphs B,1(b) and (c) and reletter the remaining paragraph accordingly:

"(b) Preventing employees from posting intraunion political literature on the bulletin board.

"(c) Issuing warning letters to employees because they have posted intraunion political literature on the bulletin board."

2. Substitute the attached Appendix B for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the allegations of the consolidated complaint, as amended, alleging that Respondent Local 745, through Bill Baker, its steward, physically assaulted employee Archie Brown in violation of Section 8(b)(1)(A) of the Act be, and they hereby are, severed and remanded for further hearing before an administrative law judge, and that thereafter he shall issue a supplemental decision containing findings of fact, conclusions of law, and a recommended order. Thereafter, Section 102.46 and 102.48 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, shall apply.

IT IS FURTHER ORDERED that the Regional Director for Region 16 shall be, and he hereby is, authorized to arrange for such further hearing and to issue notice thereof.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten employees with adverse consequences affecting tenure and terms and conditions of employment if the employees file or process grievances over wages, hours, or other conditions of employment.

WE WILL NOT prevent employees from posting intraunion political literature on the bulletin board.

WE WILL NOT issue warning letters to employees because they have posted intraunion political literature on the bulletin board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights under the National Labor Relations Act.

EAST TEXAS MOTOR FREIGHT

DECISION

STATEMENT OF THE CASE

The Charges

JAMES W. MAST, Administrative Law Judge: On April 7, 1977, William T. Weed filed charges in Case 16-CA-7132, with Region 16 of the National Labor Relations Board, herein the Board, against East Texas Motor Freight, herein Respondent East Texas, alleging violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein the Act, in that, since March 11, 1977, Respondent East Texas had discriminated against him because of his intraunion activities in Respondent Local 745. The charge was served on Respondent East Texas on April 8, 1977. On May 16, 1977, Weed filed charges in Case 16-CB-1255, against Dallas General Drivers, Warehousemen and Helpers, Local 745, affiliated with the International Brotherhood of Teamsters, Chauffeurs and Helpers of America, herein Respondent Local 745, alleging violations of Section 8(b)(1)(A) of the Act, in that, since April 3, 1977, Respondent Local 745 restrained and coerced him in the exercise of his Section 7 rights. The charge was served on Respondent Local 745 on May 17, 1977. On June 14, 1977, Weed filed charges in Case 16-CB-1257, against Respondent Local 745 alleging violations of Section 8(b)(1)(A), in that, since December 14, 1976, Respondent Local 745 restrained and coerced him in the exercise of his Section 7

rights. The charges were served on Respondent Local 745 on June 16, 1977.

On July 6, 1977, Hall E. Nichols filed charges in Case 16–CB–1279 against Respondent Local 745 alleging violations of Section 8(b)(1)(A), in that, since December 6, 1976, Respondent Local 745 restrained and coerced him in exercise of his Section 7 rights. The charge was served on Respondent Local 745 on July 7, 1977.

On August 22, 1977, Weed filed charges in Case 16–CA–7430 against Respondent East Texas alleging violations of Section 8(a)(1) and (3), in that, on August 10, 1977, Respondent East Texas terminated him because of his membership and activities in behalf of Respondent Local 745. Service was subsequently admitted.

On January 17, 1978, Archie E. Brown filed charges in Case 16–CB–1380 against Respondent Local 745 alleging violations of Section 8(b)(1)(A), in that, since September 17, 1977, Respondent Local 745 restrained and coerced him in the exercise of his Section 7 rights. The charge was served on Respondent on January 19, 1978. On February 21, 1978, Brown filed charges in Cases 16–CB–1402 against Local 745 alleging violations of Section 8(b)(1)(A), in that on February 13, 1978, Respondent Local 745 restrained and coerced him in the exercise of his Section 7 rights, by filing intraunion charges against him because he had filed charges against Respondent Local 745 with the Board. The charge was served on Respondent Local 745 on February 22, 1978.

Also on February 21, 1978, Weed filed charges in Case 16–CB–1403 against Respondent Local 745 alleging violations of Section 8(b)(1)(A), in that, on February 13, 1978, Respondent Local 745 restrained and coerced him by filing intraunion charges against him because he had filed charges with the Board against Local 745. The charge was served on Respondent Local 745 on February 22, 1978.

On March 8, 1978, Brown filed charges in Case 16–CB–1408 against Respondent Local 745 alleging violations of Section 8(b)(1)(A), in that, on March 2, 1978, Respondent Local 745 expelled him from membership because he had filed charges with the Board "and other governmental agencies and other invidious and capricious reasons." The charge was served on Respondent Local 745 on March 9, 1978.

On March 27, 1978, Johnie L. Fink filed charges in Case 16–CA–7825 against Respondent East Texas alleging violations of Section 8(a)(1), in that, Respondent East Texas interfered with, restrained, and coerced him in the exercise of his Section 7 rights. Service was subsequently admitted.

On April 12, 1978, Weed filed charges in Case 16–CB–1422 against Respondent Local 745 alleging violations of Section 8(b)(1)(A), in that, on April 3, 1978, Respondent Local 745 restrained and coerced him in the exercise of his Section 7 rights. Service was subsequently admitted.

The Formal Pleadings

On May 25, 1977, Edwin Youngblood, Regional Director for Region 16 of the Board, issued a complaint and notice of hearing in Case 16–CA–7132 against Respondent East Texas alleging violations of Section 8(a)(1) and (3) of the Act, in that (1) on March 9, 1979, Jim Sims, supervisor and agent for Respondent East Texas, threatened employee Weed with discharge because he engaged in activity against the Union; (2) on or about March 31, 1977, Ted Lane, terminal manager for Respondent East Texas, "promulgated an overly broad no distribution rule which restricted its employees from distributing literature against the Union during working hours anywhere in Respondent's terminal"; and (3) Respondent East Texas discriminatorily issued warning notices to employee Weed on March 11, 21, 22, and 31, 1977, because of his "activity against the Union" or other union activity and protected concerted activity. The complaint was served on Respondent East Texas on May 26, 1977. Respondent East Texas answered and denied the allegations of violations of the Act. On June 2, 1977, Respondent East Texas filed a "Motion for a More Definite Statement." On July 27, 1977, the hearing scheduled for August 8, 1977, was rescheduled to September 19, 1977. On August 17, 1977, the General Counsel filed a response to Respondent's motion for a more definite statement. On August 24, 1977, Henry L. Jalette, Administrative Law Judge, denied said motion for the reasons stated in the General Counsel's response.

On July 13, 1977, the Acting Regional Director issued an order consolidating cases and consolidated complaint and notice of hearing in Cases 16–CB–1255 and 16–CB–1267 against Respondent Local 745 alleging violations of Section 8(a)(1)(A) of the Act, in that (1) on April 3, 1977, union members in the presence of Respondent Local 745's representatives, Garland Moore and Billy Baker, threatened employees of Respondent East Texas (Weed) and Red Ball Motor Freight (Nichols) with physical violence because they had written a letter to the President of the United States complaining about terms and conditions of employment at Yellow Freight System and the quality of Respondent Local 745's representation of employees at Yellow Freight System; (2) on May 1, 1977, unknown individuals in the presence of Respondent Local 745's representative, Paul Castro, physically assaulted employees (Weed and Nichols) and prevented them from attending a union meeting; (3) on June 5, 1977, union members in the presence of Respondent Local 745's representatives, Carl Branch and Warren King, threatened to assault employees of Respondent East Texas (Weed) and Red Ball Motor Freight (Nichols) to deter them from attending a union meeting; and (4) on June 5, 1977, union members in the presence of Respondent Local 745's representatives, Branch and King, assaulted an employee of Red Ball Motor Freight (Nichols) to deter him from attending a union meeting. On July 25, 1977, Respondent Local 745 answered and denied the allegations of violation. On July 27, 1977, the Regional Director issued a complaint and notice of hearing in Case 16–CB–1279 against Respondent Local 745 alleging violations of Section 8(b)(1)(A), in that (1) on May 1, 1977, Jack Tucker and unknown individuals in the presence of Respondent Local 745's agents Castro, Moore, and Tucker assaulted employees of Respondent East Texas (Weed) and Red Ball Motor Freight (Nichols) to keep them from attending a union meeting; (2) on June 5, 1977, Tucker and union members in the presence

of Respondent Local 745's agents Branch, King, and Tucker threatened to assault employees of Respondent East Texas (Weed) and Red Ball Motor Freight (Nichols) to keep them from attending a union meeting; and (3) on June 5, 1979, Tucker, Bridges, and union members in the presence of Respondent Local 745's agents Branch, King, and Tucker assaulted an employee of Red Ball (Nichols) to keep him from attending a union meeting. On the same date the Regional Director issued an order consolidating cases in Cases 16–CB–1255, 16–CB–1267, and 16–CB–1279. On August 12, 1977, Respondent Local 745 answered and denied the allegations of violations.

On September 6, 1977, Respondent East Texas filed its "Motion for Continuance and Consolidation." The motion sought postponement of the hearing until after the arbitration of Weed's discharge scheduled for the week of September 19, 1977, and until the completion of the investigation and consideration of Case 16–CA–7430 (alleging Weed's discharge as a violation). On September 15, 1977, the Regional Director indefinitely postponed the hearing in Case 16–CA–7132. Thereafter, Weed, in his own behalf, filed an undated opposition to the postponement.

On September 26, 1977, the Acting Regional Director approved a bilateral informal settlement agreement in Case 16–CB–1279 (Nichols). Following the 60-day posting period the case was closed on compliance and on December 5, 1977, the Regional Director issued an order severing and closing Case 16–CB–1279. Contemporaneously with the approval of the settlement in Case 16–CB–1279, the Acting Regional Director approved a unilateral informal settlement agreement in Cases 16–CB–1255 and 16–CB–1267 (Weed). Although Respondent Union posted the notice for the required 60 days, the cases were not closed on compliance.

On March 10, 1978, the Regional Director issued an order consolidating cases and consolidated complaint and notice of hearing in Cases 16–CA–7132 and 16–CA–7430 alleging violations of Section 8(a)(1) and (3), as previously alleged in the complaint of May 25, 1977 (Case 16–CA–7132), and also that on August 10, 1977, Respondent East Texas terminated Weed because he engaged in "activity against the union or engaged in other union activity or protected concerted activity." On March 20, 1978, Respondent East Texas answered and denied all of the alleged violations. Also on March 20, 1978, Respondent East Texas filed a "Motion for a More Definite Statement." On March 24, 1978, the General Counsel opposed the motion.

On April 18, 1978, the Acting Regional Director issued an order consolidating cases and amended consolidated complaint and notice of hearing in Cases 16–CB–1380, 16–CB–1402, 16–CB–1408 (Brown), 16–CB–1255, 16–CB–1269, and 16–CB–1403 (Weed), alleging violations of Section 8(b)(1)(A) as previously alleged in the complaint of July 13, 1977 (Cases 16–CB–1255 and 16–CB–1267), and also that (5) on January 14, 1978, Respondent Local 745's secretary-treasurer and business manager, Charles E. Haddock, in a telephone conversation threatened an employee of Transcon (Brown) if he did not refrain from intraunion activities; (6) on January 25, 1978, Respondent Local 745's chief steward, Tucker, in a telephone conversation threatened an employee of Transcon (Brown) with physical violence if he did not refrain from intraunion activities; (7) on February 5, 1978, Respondent Local 745's steward, Larry Robinson, physically threatened employees of Respondent East Texas (Weed) and Transcon (Brown) because of their intraunion activities; (8) on February 10, 1978, Respondent Local 745's chief steward, Bill Baker, filed intraunion charges against Brown and Weed in an attempt to expel them from membership because of their intraunion activities; (9) on February 13, 1978, Respondent Local 745's chief steward, Carl Branch, Sr., filed similar intraunion charges against Brown and Weed; (10) on February 13, 1978, Respondent Local 745's steward filed similar intraunion charges against Brown and Weed; (11) on February 21, 1978, Respondent Local 745's chief steward, Bill Baker, and an employee of Yellow Freight System, Inc., physically assaulted Brown because of his intraunion activities; and (12) on February 28, 1978, Respondent Local 745 expelled Brown from membership because of his intraunion activities. On April 19, 1978, the Acting Regional Director issued an order consolidating Cases 16–CA–7132, 16–CA–7430 (Weed); 16–CB–1380, 16–CB–1402, 16–CB–1408 (Brown); 16–CB–1255, 16–CB–1267, and 16–CB–1403 (Weed).

On April 25, 1978, the Regional Director issued a complaint and notice of hearing in Case 16–CA–7825 (Fink) alleging violations of Section 8(a)(1), in that Ted Lane, terminal manager for Respondent East Texas, orally threatened an employee (Fink) with loss of time and discharge if he continued to pursue a grievable matter. On May 1, 1978, Respondent East Texas filed a "Motion for More Definite Statement Regarding Complaint and Notice of Hearing" and an answer to complaint and notice of hearing, in Case 16–CA–7825. All alleged violations were denied. On May 5, 1978, the General Counsel filed a response to the motion for more definite statement. On May 15, 1978, Arthur Leff, Associate Chief Administrative Law Judge, denied Respondent East Texas' motion.

On April 27, 1978, the Regional Director issued an order consolidating cases and second amended consolidated complaint and notice of hearing in Cases 16–CB–1380, 16–CB–1402, and 16–CB–1408 (Brown), 16–CB–1255, 16–CB–1269, and 16–CB–1403 (Weed); and 16–CB–1279 (Nichols), alleging violations of Section 8(b)(1)(A), as previously alleged in the complaint of July 13, 1977 (Cases 16–CB–1255 and 16–CB–1267), and the amended consolidated complaint of April 18, 1978 [Cases 16–CB–1380, 16–CB–1402, 16–CB–1408 (Brown), 16–CB–1255, 16–CB–1267, and 16–CB–1403 (Weed)], and also, that, Hall E. Nichols and Respondent Local 745 had entered into a settlement agreement in Case 16–CB–1279 which was approved by the Regional Director, and the conduct of Respondent Local 745 after the approval of the settlement agreement violated the agreement. Also on April 27, 1978, the Regional Director issued an order consolidating cases in Cases 16–CA–7132, 16–CA–7430 (Weed), 16–CB–1380, 16–CB–1402, 16–CB–1408 (Brown); 16–CB–1255, 16–CB–1267, 16–CB–1403

(Weed); and 16–CB–1279 (Nichols). Also on April 27, 1978, the Regional Director issued a further order consolidating Case 16–CA–7825 (Fink) with the cases previously listed. On April 27, 1978, Respondent Local 745 filed a motion for more definite statement in Cases 16–CB–1380, 16–CB–1402, and 16–CB–1408 (Brown), 16–CB–1255, 16–CB–1267, and 16–CB–1403 (Weed). On April 28, 1978, the General Counsel filed a response and opposition to Respondent Union's motion for more definite statement. On April 28, 1978, Administrative Law Judge Leff granted the motion, in part, and denied it, in part. The General Counsel was required to disclose the nature of the concerted activities claimed. Also on April 28, 1978, Respondent Local 745 filed its answer denying all alleged violations.

Thereafter, Respondent Local 745 filed a first amended motion for definite statement, and on the same date filed a motion to sever the cases by Respondent and the Charging Party. On May 3, 1978, the General Counsel filed a response to the motion for more definite statement and opposition to the motion to sever. On May 9, 1978, Respondent Local 745 responded to the General Counsel's opposition to severance. Also on May 9, 1978, Administrative Law Judge Leff issued an order granting, in part, the first amended motion for more definite statement. On May 15, 1978, Administrative Law Judge Leff denied the motion to sever.

On May 3, 1978, Respondent East Texas filed a motion to dismiss for lack of jurisdiction. The motion was grounded in the General Counsel's failure to properly serve unfair labor practice charges on Respondent East Texas. Also on May 3, 1978, Respondent East Texas filed a motion to sever the charges by Weed against Respondent East Texas from the other proceedings. Also on the same date Respondent East Texas filed a motion to dismiss Cases 16–CB–1380, 16–CB–1402, 16–CB–1408 (Brown); 16–CB–1255, 16–CB–1267, and 16–CB–1405 (Weed); and 16–CB–1279 (Nichols) on the basis that no relief could be required by Respondent East Texas. On May 5, 1978, the General Counsel filing opposition to the motion to dismiss for lack of jurisdiction and motion to strike. The opposition cited Respondent East Texas' answer admitting service of charges. On the same date the General Counsel filed an opposition to the motion to sever. On May 19, 1978, the General Counsel filed an opposition to Respondent East Texas' motion to dismiss for failure to state a claim upon which relief can be granted. On May 15, 1978, Administrative Law Judge Leff in separate orders denied the motion to dismiss for lack of jurisdiction and the motion to sever. On May 24, 1978, Administrative Law Judge Leff issued an order denying the motion to dismiss for failure to state claim.

On May 9, 1978, Respondent Local 745 moved to postpone the hearing in all cases against it. On May 10, 1978, the hearing was rescheduled to September 19, 1978. On May 10, 1978, Respondent East Texas moved for a change of venue in Cases 16–CA–7132 and 16–CA–7430 (Weed). On May 19, 1978, the General Counsel filed an opposition to the motion for change of venue. On May 24, 1978, Administrative Law Judge Leff denied the motion for change of venue subject to the right to renew at the hearing.

On May 19, 1978, the Regional Director issued an order consolidating cases, third amended consolidated complaint, and notice of hearing in Cases 16–CB–1380, 16–CB–1402, and 16–CB–1408 (Brown); 16–CB–1255, 16–CB–1267, 16–CB–1403, and 16–CB–1422 (Weed); and 16–CB–1279 (Nichols), alleging violations of Section 8(a)(1)(A) as previously alleged in the order consolidating cases and second amended complaint and notice of hearing on April 27, 1978, and, also, that (13) on April 3, 1978, Haddock orally threatened Brown and Weed. Also on May 19, 1978, the Regional Director issued an order consolidating Cases 16–CA–7132 and 16–CA–7430 (Weed) with the previous cases. On May 30, 1978, Respondent Local 745 filed its answer to the third amended consolidated complaint.

On May 29, 1978, Respondent East Texas filed a second motion to sever. On June 2, 1978, Respondent Local 745 filed an adoption of Respondent East Texas' motion to sever. Also on June 2, 1978, the General Counsel filed an opposition to the motion to sever. On June 20, 1978, Administrative Law Judge Leff denied the motion to sever.

On June 6, 1978, the Regional Director issued an order consolidating cases in Cases 16–CA–7132 and 16–CA–7430 (Weed), 16–CA–7825 (Fink), 16–CB–1380, 16–CB–1402, and 16–CB–1408 (Brown), 16–CB–1255, 16–CB–1267, 16–CB–1403, and 16–CB–1422 (Weed), and 16–CB–1279 (Nichols). On June 16, 1978, Respondent East Texas filed an objection to the Regional Director's order consolidating cases. On the same date Respondent East Texas filed a renewal of prehearing motions. On June 19, 1978, Respondent East Texas filed a request for special permission to appeal the Regional Director's orders consolidating cases. On June 19, 1978, the Regional Director transferred the objections to the Chief Administrative Law Judge. On June 2, 1978, the General Counsel filed opposition to the objections; on June 26, 1978, the General Counsel filed a response and opposition to the request for special permission to appeal. The Board thereafter denied the request for special permission to appeal on July 31, 1978.

On June 19, 1978, Respondent East Texas renewed its request for a change of venue to another place selected by the General Counsel. On September 15, 1978, the Acting Regional Director denied the motion for change of venue. On September 6, 1978, Respondent Local 745 filed a motion for continuance; the motion for continuance was denied on September 8, 1978. On September 7 and 8, 1978, the General Counsel complied with Administrative Law Judge Leff's orders for more definite statements. On September 12, 1978, Respondent East Texas renewed its motion for a change of venue.

The hearing opened as scheduled on September 19, 1978, in Fort Worth, Texas, before Robert A. Gritta, Administrative Law Judge of the Board. Respondent Local 745 filed a motion to recuse Administrative Law Judge Gritta. Administrative Law Judge Gritta granted the motion and recused himself as judge. On September 22, 1978, pursuant to 5 U.S.C. § 3344, I was designated by the Civil Service Commission to conduct the hearing and to issue a decision.

On October 3, 1978, Respondent Local 745 filed a further motion for continuance. On October 6, 1978, the General Counsel opposed the motion; on October 10, 1978, Hall E. Nichols opposed the motion. On October 20, 1978, I denied the motion for continuance.

The hearing opened as scheduled. The prior record by agreement of the parties was voided except for historical significance, and the hearing was had as if the hearing had not previously opened.

At the opening of the hearing the General Counsel moved to amend the third consolidated complaint. The motion was granted over objection of Respondent Local 745 and Respondent East Texas. The substance of the complaint after trial amendments is at "Issues," below. All parties participated in the hearing which lasted from time to time for 40 days until March 1, 1979. After the close of the hearing the General Counsel, Respondent East Texas, and Respondent Local 745 filed briefs.

On the entire record I make the following:

FINDINGS OF FACT

I. INTRODUCTION

This is about intraunion activity. The allegations are of Respondent Local 745's restraint and coercion of members, and by a causal connection, of Respondent East Texas's interference with, restraint and coercion of, and discrimination against employees. Because Respondent Local 745 is the contractual representative, the case also concerns deferral of grievances about the alleged acts of Respondent East Texas to the grievance-and-arbitration procedure. Thus, it also questions whether a union can ever fully and fairly represent the interests of its alleged dissidents in that procedure.

Despite the complexity of pleading and the length of the record this is essentially a simple case, both factually and legally. Much of the evidence is background and collateral which in the final analysis only tangentially bears on the ultimate disposition of the material issues. Necessarily much of this evidence must be considered and set out in this Decision. *U.S. Rubber Co.*, 93 NLRB 1232, 1233 (1951).

Respondent Local 745's brief noted that "these are truckdrivers who fight, cuss and argue as they breathe." There is much of that here. The record, in fact, is a study of scatology, obscenity, and blasphemy. Unless this *lingua franca* is necessary to convey the meaning of statements, it is not set out here.

II. JURISDICTION

Respondent East Texas is, and has been at all material times, a corporation organized and existing under the laws of the State of Texas. It is engaged in the business of providing interstate motor freight transportation between the State of Texas and 26 other States. Its principal office and place of business is in Dallas, Texas, with terminals in over 100 other cities. It is admitted that Respondent East Texas annually performs services of over $50,000 of which services valued in excess of $50,000 are rendered directly to customers in States other than Texas. I find that Respondent East Texas is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent East Texas is a party to the National Master Freight Agreement, a collective-bargaining agreement with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

III. LABOR ORGANIZATION INVOLVED

On numerous occasions the Board has found the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its affiliated local, Respondent Local 745, to be labor organizations within the meaning of the Act. Respondent Local 745 is the contractual representative of the employees of Respondent East Texas, Red Ball Motor Freight, Inc., Transcon Lines, and many other trucking employees in the Dallas, Texas, area pursuant to the National Master Freight Agreement. I find that Respondent Local 745 is a labor organization within the meaning of Section 2(5) of the Act.

A. *Issues*

The issues as developed by the pleadings and at the hearing are as follows:

1. Procedural questions raised during the hearing and reargued in the briefs are as follows:

(a) Should all Charging Party Weed's testimony be struck pursuant to motions by Respondent East Texas and Respondent Local 745, because of his refusal to answer questions related to the May 1, 1977, incident?

(b) Should all of Charging Party Brown's testimony be struck pursuant to the motion of Respondent Local 745 because of his failure to comply with the *Jencks* rule as adopted by the Board?

(c) Should Respondent East Texas and Respondent Local 745 be granted attorneys' fees and costs?

(d) Should the motions to sever filed by Respondent East Texas and Respondent Local 745 have been granted, and were they substantially prejudiced by the joint litigation of the cases?

(e) Should the tapes of telephone conversations, which were surreptitiously made by Charging Party Brown, be rejected as evidence in support of the General Counsel's case?

(f) Should Respondent Local 745's motion to intervene in the cases against Respondent East Texas have been granted because of the issue of Respondent Local 745's interest in a test of *Spielberg* issues?

2. In the circumstances of the case were the officers, business agents, assistant business agents, stewards, and assistant and alternate stewards, agents of Respondent Local 745?

3. On April 3, 1977, did Billy Baker, steward at Yellow Freight, threaten Weed with violence because of Weed's protected intraunion activities under circumstances where Respondent Local 745 was responsible for the conduct?

4. On May 1, 1977, were Weed and Nichols assaulted and beaten because of their protected intraunion activities and to prevent them from attending a union meeting,

under circumstances where Respondent Local 745 was responsible for the conduct?

5. On June 5, 1977, was Nichols assaulted by Jack Tucker, assistant steward at Missouri Pacific Truck Lines, because of Nichols' protected intraunion activity and to prevent him from attending a union meeting, under circumstances where Respondent Local 745 was responsible for the conduct?

6. On January 14, 1978, did Charles E. Haddock, secretary-treasurer and business manager of Respondent Local 745, threaten Brown in a telephone conversation under circumstances where Respondent Local 745 was responsible for the conduct.

7. On January 31, 1978, did Jack Tucker threaten Brown in a telephone conversation, under circumstances where Respondent Local 745 was responsible for the conduct?

8. On February 5, 1978, did Larry Robinson, alternate steward at Southwestern Transportation, threaten and assault Weed and Brown under circumstances where Respondent Local 745 was responsible for the conduct?

9. On February 21, 1978, did Billy Baker, steward at Yellow Freight, assault Brown under circumstances where Respondent Local 745 was responsible for the conduct?

10. On April 3, 1978, did Haddock threaten Brown and Weed because of their protected intraunion activity, under circumstances where Respondent Local 745 was responsible for the conduct?

11. Were Brown and Weed charged, expelled, and suspended from Respondent Local 745 because of their protected intraunion activity, under circumstances where there was a violation of the Act despite the proviso to Section 8(b)(1)(A)?

12. Should the settlement agreements be set aside because of the postsettlement conduct of Respondent Local 745?

13. On March 9, 1977, did Jim Sims, dock foreman for Respondent East Texas, threaten Weed with termination because of his protected union activities?

14. On March 31, 1977, did Ted Lane, terminal manager for Respondent East Texas, promulgate an overly broad no-distribution rule which restricted Weed's use of the bulletin board?

15. On March 11, 21, 22, and 31, May 11 and 25, and June 17, 1977, did Respondent East Texas discriminatorily issue written warnings to Weed, and on June 8, 16, 22, and 30, and July 13 and 28, 1977, discriminatorily orally counsel Weed because of his protected union activities?

16. On August 11, 1977, did Respondent East Texas discriminate against Weed by discharging him because of his union and protected concerted activities?

17. Would it effectuate the Act to find violations and remedy the conduct of Respondent East Texas against Weed where the grievance-arbitration procedure has been invoked?

18. During early 1977 did Ted Lane threaten Fink with loss of work if he filed or processed a grievance?

B. *Background*

1. Respondent East Texas

Respondent East Texas has its Dallas operations at the Dallas terminal at 4242 Irving Boulevard (the corner of Norwood and Irving) in Dallas, Texas. The Dallas terminal is a large fenced area with two buildings, the terminal building and the maintenance building. Additionally there is a large truck parking area along the terminal building which is approximately 800 feet deep along the full length of the terminal building, which is 589 by 100 feet, and consists of a large covered dock and the terminal offices. Also located in the terminal building are the break-out area (at about the midpoint on the dock), the dock supervisors' office (a glassed-in area with a view of the entire dock), the breakroom (a lunchroom area with vending machines and the bulletin board), and the dock employees restroom. Along both sides of the dock are 109 numbered doors. The numbered doors are designated for identifiable destination and origin cities. Trailers are spotted at the doors for loading and unloading. Tractors and trailers awaiting use are parked in the 10-acre parking area. The maintenance building is perpendicular to the long axis of the terminal and at the end of the parking area.

Ted Lane is terminal manager at the Dallas terminal; Wynn Holt is senior terminal operations manager. The first-shift supervisors are J. D. Clark (terminal operations manager), Stan Moreland, Jim Anderson, and Jim Blackburn (dock supervisors). The second-shift supervisors are Jim Sims (terminal operations manager), Cecil Bailey, Leon Bomar, and J. J. Coker (dock supervisors). Additionally, at the terminal there are two city dispatchers, one city route supervisor, four line haul dispatchers, and one office manager. Kenneth Matthews is director of industrial relations for Respondent East Texas. All are supervisors and agents of Respondent East Texas within the meaning of Section 2(11) and (13) of the Act.

Respondent East Texas employs approximately 350 employees at the Dallas terminal in classifications of line drivers, city pickup and delivery drivers, checkers, forklift operators, hostelers, and mechanics. At the immediate supervisor level, line drivers and mechanics are separately supervised.

Most of this case is concerned with employees in the classifications of checker, forklift operator, and hosteler. These employees spend most of their working day in the terminal area. Although checkers may be assigned city pickup and delivery duties, they are primarily engaged in checking and loading freight. Hostelers' normal duties are to move and park tractors and trailers in the terminal area.

Respondent East Texas' system of discipline is grounded in the collective-bargaining agreement. The lowest order of discipline is oral consultation. It is not normally subject to the grievance procedure, but is used as internal control. The only record of consultation is a written report in the employee's personnel folder. Where, as here, consultations are used to show prior warnings, they may be considered in subsequent grievance proceedings.

Warning letters are subject to the contract. These may be issued for any violation of the employer's rules. Warning letters are subject to the grievance procedure, but grievances on warning letters are not heard until the employer attempts to use the warning to justify disciplinary loss of time, suspension, or discharge.

Except in rare instances not involved here, discharges must be based on prior warnings. Discharges are subject to the grievance procedure. Discharges, suspensions, and lost-time grievances can be taken to the Southern Multi-State Grievance Committee. The committee's decision is binding on all parties, except in situations not involved here.

2. Respondent Local 745

Respondent Local 745 is the bargaining representative of the employees of Respondent East Texas and a number of other trucking employers in the Dallas, Texas, area. It is one of the largest locals in Texas with over 10,000 members. Respondent Local 745 is a member of the Joint Council 80 and the Southern Conference of the Teamsters International.

Charles E. Haddock, secretary-treasurer and business manager, is the chief executive officer of Respondent Local 745. Charles Rogers is president; George Prda, vice president; E. F. "Foots" Johnson, recording secretary; and L. Z. McCoy, R. L. Perkins, and Ples Carter, trustees, of Respondent Local 745. These named individuals are elected officers and business agents of Respondent Local 745. They also are the members of the Local's executive board and represent the management of Respondent Local 745.

Additionally, Respondent Local 745 employs eight assistant business agents; Garland Moore, Ray Monk, Lawrence Burns, Mike Kline, Allen Stanford, Alex Thomas, T. C. Stone, and Bill Dunn. The assistant business agents are appointed by the Local's secretary-treasurer and are not elected by the membership.

Business agents and assistant business agents perform various duties for the local including administration of the contracts. Each is normally assigned to a specific employer covered by the agreements. He acts as primary representative of the employees of that employer, including initial interpretation of the agreement, processing of grievances, and as contact person for the employees and the employer. Garland Moore is assigned to Respondent East Texas.

The National Master Freight Agreement, article 4, provides for stewards and alternate stewards in the administration of the contract, as follows:

> The employer recognized the right of the Local Union to designate job stewards and alternates from the Employer's seniority list. The authority of job steward's and alternates so designated by the Local Union shall be limited to, and shall not exceed, the following duties and activities:
>
> (1) The investigation and presentation of grievances with the Employer as the designated company representative in accordance with the provisions of the collective-bargaining agreement;
>
> (2) The collection of dues when authorized by appropriate Local Union action;
>
> (3) The transmission of such messages and information of such message and information, which shall originate with, and are authorized by the Local Union on its officers, provided such message and information (a) have been reduced to writing, or,
>
> (b) if not reduced to writing are of a routine nature and do not involve work stoppages, slowdowns, refusal to handle goods, or any other interference with the Employer's business.
>
> Job Stewards and alternates have no authority to take strike action, or any other action interrupting the Employer's business, except as authorized by official action of the Local Union. The Employer recognized these limitations upon the authority of job stewards and their alternates, and shall not hold the Union liable for any unauthorized acts. The Employer in so recognizing such limitations shall have the authority to impose proper discipline, including discharge, in the event the job steward has taken unauthorized strike action, slowdown and work stoppage in violation of this agreement.
>
> Stewards shall be permitted reasonable time to investigate, present and process grievances on the company property without loss of time or pay during his regular working hours without interruption of the Employer's operation by calling group meetings; and where mutually agreed to by the Local Union and Employer, off the property or other than during his regular schedule without loss of time or pay. Such time spent in handling grievances during the steward's regular working hours shall be considered working hours in computing daily and/or weekly or overtime if within the regular schedule of the steward.

Stewards of Respondent Local 745 are not authorized to collect dues.

The bylaws of Respondent Local 745, article VI, "Officers," section 2, "Stewards" status:

> Stewards are not officers of the Local Union. They shall be selected in such manner and shall have such duties as the local Executive Board may direct.

Consistent with the contract, the steward's primary duties relate to investigation and presentation of grievances. In the main this is before the written grievance is filed. Stewards may routinely inform an employee of his rights and discuss the gripes of employees with employees' supervisors. They may also assist the employee in drafting a grievance and forward the grievance to the business agent. They have no authority to refuse a grievance filed by an employee, but must submit it to the Union. Also, stewards cannot settle a grievance without the approval of the employee. Where the employer investigates an incident of employee conduct, the steward will attend the interview upon the request of the employee.

After the written grievances is filed, primary responsibility for its processing transfers to the business agent. The business agent is then responsible for an investigation, employee interviews, and representation before the employer. The business agent may request assistance of the steward on any employee in the unit, in any of these activities. If the grievance is not disposed of at this stage, the business agent continues to be responsible to see that it is placed on the Southern Multi-State Grievance Committee calendar, and that it is presented at the committee hearing. Again, the business agent may request assistance of the steward or any any employee in the unit, at the area committee level.

Alternatively, employees may draft their grievances without the assistance of the steward. They may communicate their grievances directly to the business agent and deal with him exclusive of the steward. Employees, also, may seek the assistance of other employees, who are not stewards, for consultation of their rights and in drafting grievances. Nor does there appear to be any requirement that the employer initiate contacts with the Union through the steward. The employer generally deals directly with the business agent.

Also consistent with the contract, the stewards act as conduit for information from Respondent Local 745 and the employees. This would include posting of notices of meeting, activities, and elections on the bulleting boards authorized by the contract. The National Master Freight Agreement at article 19, section 2, states: "The Employer agrees to provide suitable space for the Union bulletin board in each garage, terminal or place of work." Postings by the Union on such boards are to be confined to official business of the Union. It would also include other routine communications between the Union and the employees. Communication from the Union to the employer, however, is normally from the business agent to the employer's representative.

Stewards are elected by their fellow employees and under the contract must be employees "from the Employer's seniority list." There are no other requirements for the position. They serve at the pleasure of their fellow employees. There is no tenure of office and they are subject to removal by a petition of no-confidence signed by over 50 percent of the employees. There are no special requirements for the petition. The Union has no discretion in holding the steward election except where there has been excessively frequent changes of stewards. Any employee may seek election as steward in his unit and there are often more than one candidate. Upon election by his fellow employees, the Union routinely issues the formal designation and informs the employer of the designation. The steward may designate one or more assistant or alternate stewards to assist him. This appears mainly to be for the purpose of covering all shifts and schedules.

Stewards represent only employees in their unit; that is, the city and dock steward does not represent line drivers. Stewards and assistants or alternate stewards receive no pay from the Union for their normal steward work. As employees of the employer they are compensated by the employer for their work hours.

Stewards hold no special status in the local union. They have the same rights and duties as other members in intraunion activities. They have no special responsibility at meetings or at the union hall. As in the case of any member, a steward may be asked by the union to assist in organizational, grievance, or other activity in the interest of the union. The selection may be for any of a number of reasons; i.e., familiarity with the situation or people, ethnic origin, or language ability. Where a steward or other member acts for the union he may be compensated for lost time or expenses.

Robert Baker was steward at Respondent East Texas from 1975 until 1976 when he resigned. He was succeeded by Bobby Green who served until 1977. Green designated Marvin Fischer, Andy Anderson, and Boyce Ross as his alternates and assistants. Green was removed from office by the employees and replaced by Warren King. King designated R. Baker and Norman Roberts as his alternates.

Bill Baker, brother of R. Baker, has been steward at Yellow Freight Systems since March 1977; Louis Chapman has been assistant or alternate. Carl Branch, Sr., was steward at Santa Fe Transportation in 1977 and 1978. Paul Castro has been assistant steward at Transcon Lines since 1976. W. B. Rossett has been alternate steward at I. C. X. Freight Lines since 1974. Jimmy Williams was steward at Southwestern Transportation Company; he designated Larry Robinson his alternate steward in 1977. Jack K. Tucker was steward at Missouri-Pacific Truck Lines (also referred to as T and P Truck Lines).

Respondent Local 745 has its office and meeting halls at 1007 Jonelle Street in Dallas, Texas. The building is located on a quadrangle of land of about 2 or 3 acres.[1] The building faces east toward Jonelle which is a north-south street. The building is set back from the street about 75 feet, which is utilized as a parking area along the approximately 350 feet of the Jonelle Street front. To the south of the Union's property is an alley way of about 250 feet which forms a square corner at the rear of the building and then proceeds for about 375 feet to the access road to the Hawn Freeway. The access road forms a 45-degree diagonal on the north side of the property for nearly 300 feet. There is also a large triangular parking lot on the north side of the building.

The building is a converted bowling alley. Entrance to the building is through glass double doors to a vestibule and a second set of glass double doors to the reception area. Offices are located on both sides of a wide hallway which is perpendicular to the entry. The meeting room, which was formally the bowling lane area, is behind the offices and lowered about 2 feet below the office level. There are solid doors between the hallway and the meeting room. These are generally open during meetings. The podium is raised at the front side of the hall and faces toward the back of the building. The completely enclosed meeting room is about 100 feet across. The meeting room will accommodate over 1,000 seated

[1] Because of substantial distortions the plat maps introduced in the hearing by the General Counsel are unreliable. They are only used to establish general direction and location but not distance or scale. In fact, north on the plat is actually south.

people. The largest attendance at a regular meeting was 2,500; the smallest, during the ice storm, was 500.

3. William T. Weed

After a period as a casual employee in the industry, Weed was employed by Respondent East Texas as a city dockman at the Dallas terminal in 1967. Weed's membership in Respondent Local 745 began during his casual employment.

In 1970 Weed was given a warning letter for engaging in an unauthorized work stoppage. Other employees were similarly reprimanded. Later the employees were told that the warning letter would not be used against them.

Weed was laid off in 1970 in the merger of seniority lists when Respondent East Texas acquired Valley Copper States Freight Lines. Over 100 employees were laid off. During the 2-year layoff, Weed achieved regular status as an employee at Southwestern Transportation.

In early 1972, Weed applied for a line driver job at Respondent East Texas. He was given a road test; he failed. He filed a grievance claiming the test unfair. At or about the same time he was recalled as a city dockman. Respondent Local 745 won his grievance and, in September 1972, he was given a second test; again, he failed. Again he grieved claiming bias and "underhanded tactics to keep him off the road." The union won a third test to be given by a fellow employee. When the employee did not act quick enough, Weed filed a third grievance again, claiming bias (this time by the fellow employee). The third test was given and Weed finally passed. In 1973, he was given a line driver job, made one trip, was still dissatisfied, and exercised his contract retreat rights to return to city dockman.[2]

In 1974 Weed filed a grievance over a claim for reporting-in pay. He claimed that Respondent Local 745 unfairly failed to process the grievance. Record evidence established the grievance was processed and scheduled for hearing before the Southern Multi-State Grievance Committee. Prior to hearing the grievance was settled; Weed was paid the 4 hours.

In the summer of 1974 Weed was off work because of an injury. He returned to work with his own doctor's certificate and not one from the Company's doctor. Ted Lane required him to go to the company doctor in accordance with established practice. Because he had already clocked in Weed claimed report-in pay and grieved. Again, he claimed Respondent Local 745 unfairly failed to represent him. Record evidence establishes that Respondent Local 745 processed the grievance, scheduled it for hearing, settled it, and again obtained compensation for Weed.

Sometime in late 1974 Weed was reported to have been directed to perform work by Supervisor Fuller. He refused with substantial obscenities. Fuller hit him. Later Weed appeared at the union hall in an agitated state with a black eye and a long knife. He wanted Garland Moore to tell Fuller that he had gotten a knife and if Fuller touched him again he would "cut his head off." Moore did not comply with the request.

Also in late 1974 Eddie Edmunds, an employee, filed a grievance against Respondent East Texas on a change in operations which affected a number of employees. Weed "had some in-put" along with others in the grievance. He was also in a group of 10 or 20 who attended the Southern Multi-State Grievance Committee hearing. Moore presented the grievance; the committee ruled for the employees.

In February 1975, Weed received a warning letter when he failed to report for work. There was no record of a grievance being filed.

Also in February 1975 Weed was laid off when he again failed to report to work. He had gone to the grievance hearing in Biloxi, Mississippi. Despite the availability of a contractual right, Weed had not attempted to obtain approval of time off. Weed grieved claiming "retaliation." The grievance was heard by the committee in April 1975; Moore presented the grievance. The grievance was denied.

In March 1975, Weed grieved because as he alleged he was called in too late to make a shift while lower seniority men were working. The grievance claimed that Respondent East Texas was "on his back" and Respondent Local 745 would not "help . . . get them off my back." Disposition of the grievance was not established.

Sometime in late 1975, Weed, along with several others, sought election as steward at Respondent East Texas. He was badly defeated by R. Baker, the incumbent. Weed's version of the election is not credited.

Shortly thereafter, Weed nominated himself for the secretary-treasurer and business manager of Respondent Local 745 in the regular triennial election. This was his first significant intraunion activity. He opposed Charles E. Haddock, the incumbent. At the same time, Hall Nichols sought election as president; Oliver Anaiza ran for trustee.

On November 5, 1975, Weed was orally counseled for leaving his "work area to talk to other employees." A consultation report was prepared and placed in Weed's personnel file.

On November 7, 1975, Lane issued a warning letter to Weed because he went on the dock on November 6, on his day off, and "began visiting with employees while [they were] at work." The letter made reference to the November 5 consultation. Weed did not file a grievance on the November 7 letter. The incident was the subject of an unfair labor practice charge against Respondent East Texas, Case 1-CA-6564, dated April 30, 1976. Weed withdrew the charge on May 24, 1976.

Contemporaneous with the actions against Weed, Lane also counseled R. Baker on November 6 "about interrupting employees for purposes other than grievance investigation." Also on November 24, Lane gave R. Baker

[2] Weed made a baseless claim that Respondent East Texas acted against him to prevent blacks who were on the seniority list from becoming line drivers. The record evidence established and Weed finally admitted that there were no black employees on the bid roster at that time. Such testimony, which is typical of much given by Weed, as well as his demeanor as a witness, causes me to discredit Weed completely except where he is corroborated by reliable witnesses on independent documentary evidence. Weed's testimony as well as much of his writing evidence a substantial proclivity to invent, exaggerate, and embellish events.

a written warning "about talking with employees who were at work." The letter threatened disciplinary action in the event of recurrence.

During the election campaign Weed and some supporters went to the T and P Freight Line's terminal dock one night, without the knowledge or consent of T and P management, but at the invitation of an employee. There was a confrontation on the dock between the pro-Weed group and an apparent pro-Haddock group of T and P employees. Jack Tucker was identified among the T and P group. The pro-Weed group beat a hasty retreat from epithets and missiles from the T and P employees. Weed's car was damaged in the incident.

The election was held the first week of December 1975. The incumbents defeated the Weed-Nichols-Araiza candidates by a substantial majority. Weed and Nichols protested the election to Joint Council 80 of the Teamsters. The Joint Council denied the protest on the merits. Weed filed a complaint with the U.S. Department of Labor, Labor Management Services Administration. On June 12, 1976, the complaint was dismissed because "no violations occurred which might have affected the outcome of the election." Weed and Nichols next filed an action in U.S. District Court against the Secretary of Labor and Respondent Local 745. On January 12, 1977, the case was dismissed.

On January 27, 1976, Weed was counseled by Leon Boman for "lack of production" and "not working." When confronted by Boman about not working, he complained about regular employees being laid off while casual employees were being used. Boman told Weed, "Work or punch out"; Weed went to work. Boman prepared a consultation report for Weed's file and recommended as followup a warning letter. Boman recommended a "follow up" of a warning letter. No warning letter was issued.

On February 14, 1976, Lane observed Weed in a conversation with an employee by the name of Weems on the loading dock. The consultation report stated:

> Bill Weed was talking with Weems behind the 69 door. Weed was assigned to unload 21-7221 in the 41 door across the dock. I instructed Weed to discontinue the conversation and return to his work area. I advised him we had not time for idle conversation in the work area.

Weed returned to work. Lane recommended a followup of a warning letter or suspension.

Next, on February 23, 1976, Weed was counseled by David Kendzierski, foreman, after another incident. The consultation report stated as follows:

> Mr. Weed was asked to cut off his break-out and stack freight. There were no empty carts on the line and Mr. Weed was observed standing idle. I asked him to load 63 & 64 doors to make more empty carts.

Weed replied that "he was tired of being picked on . . . [in] profane language . . . [and refused] to work until everyone else was put to loading." He then walked off "yelling and cussing." Kendzierski caught up with him and again told him to go to work. Weed finally went back to work. Kendzierski prepared a report and recommended a warning letter and other appropriate action. No warning letter was issued.

On February 24, 1976, Jim Sims had a series of confrontations with Weed. He counseled Weed for "lack of production . . . [not] working . . . standing around talking . . . [and] stopping other people from working." Later he found him loafing in the restroom and sent him back to work. Yet later, he counseled him for not working and talking to employee Crabtree; he told Weed to work or be sent home. Weed verbally abused Sims. Finally, Sims was in the restroom and Weed entered in an agitated state. Weed told Sims with appropriate obscenities that he was going to "crush [Sims'] skull and . . . kill him." Sims was nervous because Weed was "a fairly large individual." Sims calmed Weed down; Sims then filed a report. The following day Wynn Holt suspended Weed for 2 days. Weed filed a grievance which stated, in part, as follows:

> As for talking, *there is nothing in the contract that says anyone cannot talk* as long as he performs along. They have picked on me out of about 50 men to hound, and there is a reason for their hounding but I hardly think this is the place or the time to discuss it. I will have my day in Federal Court to explain the reasons for them hounding me and by the way in which they have been put up to it. I will prove this in court. I was suspended without a cause because *there was no complaint about my work, just that I talk to* [*sic*] *much which is my constitutional right* as long as I do not cause anyone any trouble and I am going to have my say, also when I get into Federal Court. [Emphasis supplied.]

Respondent Local 745 processed the grievance and presented it to the Southern Multi-State Grievance Committee on March 15, 1976. The grievance was denied. This suspension was also alleged as a violation in Case 16-CA-6564.

On March 8, 1976, Jim Sims had a confrontation with employee A. J. Hipp; Hipp hit Sims several times and chased him along the dock. Weed encouraged Hipp by yelling "Get a stick and kill the [expletive] . . . you've already hit him and you might as well not let him get away . . . [and] you're fired anyhow . . . [get your] money's worth." Hipp was dicharged and Weed was given a warning letter. Hipp grieved; Weed did not. Moore represented Hipp before the Southern Multi-State Grievance Committee and there was a reduction to a 2-week suspension for Hipp. Hipp had been an observer for Weed in the December 1975 election.

Hipp's explanations of the incident and the workplace standards were as follows:

> Q. [By Mr. Barnes] You don't think now that employees . . . ought to be permitted to slug their supervisors, do you?

A. Well, now, they did it before that pretty regular. They fought pretty regular . . . .

* * * * *

Q. You knew you had done wrong in what you had done, didn't you?

A. Well, now, there is a provocation that goes over right and wrong.

Q. So you are telling me that . . . you thought you were doing the right thing?

A. If I walk up to you and call you [an obscene name] and you slug me, I'll get up and shake your hand . . . .

On July 2, 1976, employees Weed, R. Baker, and Gene Wade were discharged for joint unauthorized use of the xerox machine to copy employee timecards. The information they were getting was supplied to the union pursuant to the contract. Moore negotiated full reinstatement with backpay for the trio. Despite full reinstatement and compensation Weed testified to a baseless charge of disparate treatment in backpay.

Upon being reinstated on July 6, 1976, Weed was given a warning letter for threatening Lane with physical violence at the discharge interview on July 2. At that time Weed "became extremely violent, got up out of his chair in a rage, leaned over . . . [Lane's] desk, and [threatened], 'you're nothing but a little bitty mouse, and I'll assure you that you're going to get yours.'" No grievance was filed.

On July 16, 1976, Weed went up to an employee, Woodward, and gave him the greeting of the day. Woodward responded by hitting Weed and bloodying his nose. Weed went to the hospital to be repaired. In accordance with established practice both Weed and Woodward were suspended pending investigation. Woodward abandoned his employment and was discharged. Weed was reinstated with backpay. No grievance was filed. There was no claim in this case that the altercation was related to Weed's union activities, although Weed did claim so in his letter to President Carter.

Sometime during mid-1976 a steward election was held at Respondent East Texas. Weed and five or six others solicited signatures on a petition for Bobby Green. Green defeated R. Baker in the election. He appointed Boyce Ross, Andy Anderson, and Marvin Fischer as assistant or alternate stewards. On July 1976 Weed assisted Green "informally" in drafting a grievance for Johnie Fink (the grievance is discussed later). Respondent East Texas was apparently unaware of Weed's assistance. Green was subsequently voted out of office in the spring of 1977, when he was temporarily off work because of an injury.

4. Hall E. Nichols

In or about 1952 Nichols was employed as a line driver at Red Ball Motor Freight. Except for a period of about 4 months, Nichols continued to work at Red Ball to the present time. He has been a member of Respondent Local 745 since about 1957. In 1969 he was a candidate for trustee of the local; he was not elected. In 1975 he was a candidate for president of the local; he was not elected. Other than as noted above in *Weed's* background, Nichols had no prior incidents involving his union activities. At his place of work Nichols was appointed alternate steward in or about 1971.[3]

Subsequent to the conduct alleged in the complaint, Nichols was a candidate of secretary-treasurer and business manager of the Local in the triennial election of 1978.

5. Archie E. Brown

In or about 1973 Brown was hired by Transcon Lines as a line driver. From 1973 until 1976 he worked in Dallas; in 1976 he was transferred to Oklahoma City, Oklahoma. In late 1976 he was returned to Dallas where he worked until his discharge September 10, 1977. He joined Respondent Local 745 in 1973, in 1976 he transferred his membership to Teamsters Local 886 in Oklahoma City.

Brown's relationship with his employer and the union have been the subject of previous Board cases. *Transcon Lines*, 235 NLRB 1163 (1978), concerned his activities during the period of December 1976 through May 1977. Specifically, the complaint related to the employer's prohibition of distribution in the driver's room of propaganda related to intraunion affairs. The Board found a violation.

A second charge was filed by Brown against Transcon Lines, Case 16–CA–7507, on September 26, 1977; it alleged his discriminatory discharge. After investigation, the charge was dismissed November 7, 1977. The dismissal was originally sustained on appeal. After reconsideration on Brown's motion, the denial of the appeal affirmed, but reformed.

Also, Brown's relationship to the union is reported in *International Brotherhood of Teamsters, Dallas General Drivers, Warehousemen and Helpers Local 745 (Transcon Lines)*, 240 NLRB 537 (1979) (corrected by unpublished order June 27, 1977). In correcting the Decision the Board states as follows:

> The record shows that upon transferring to the Employers' Dallas terminal in September Brown sought to transfer his union membership from Teamsters Local 886 to Respondent Local 745. Brown contended that he was denied permission to transfer into Local 745 because he refused to join D.R.I.V.E. (Democratic-Republican Independent Voter Education), the political arm of the Teamsters.

Contrary to the position of the General Counsel and Brown, it is concluded that Brown was denied the return transfer to membership in Respondent Local 745 because of his delinquency in dues to Teamsters Local 886.

This is based on the credited evidence of the delinquency, the conversation at the time of the application

[3] On the basis of his demeanor as a witness, Nichols is credited to the extent that he is not contradicted. Like Brown he has a tendency to overstate and overdramatize incidents.

for transfer, and my assessment of Brown's credibility.[4] This conclusion that he was not denied a transfer because he would not join D.R.I.V.E. is corroborated in the evidence that a substantial number of the members of Respondent Local 745 do not participate in D.R.I.V.E.

Beginning in December 1976 or January 1977 and continuing throughout the period of this case, Brown engaged in a substantial advertising campaign based on the distribution of literature and personal solicitation. Some of this activity is reported in *Transcon Lines, supra*, and *Teamsters Local 745 (Transcon Lines), supra*. The literature consisted of newspaper and leaflet publications of PROD Inc. (Professional Drivers Council). Additionally, some were leaflets and letters prepared by Brown. All of the PROD material generally attacked the Teamsters International, while Brown's literature concentrated its attack on Respondent Local 745. In *Transcon Lines, supra*, the Board adopted the finding that "the literature . . . bears sufficient pertinence to the purposes and policies of the Act to warrant the Act's protection."

In addition to posting and distribution at his own place of employment, Brown distributed the literature by leaving it at the union hall on Jonelle Street. He also gave copies to members of Respondent Local 745 and to employees of trucking employers in the Dallas area. Further, he went to the places of business of most trucking employers in the Dallas area and posted copies on company bulletin boards, and distributed and read copies to employees on the employers' docks. There is no evidence that Brown sought or obtained permission of the employers to engage in this activity on any company's property. To the contrary there is evidence of his attempts to do it surreptitiously by avoiding the supervisors and the guard shacks. This was to the extent of entering through holes in fences at terminals. Also, there is evidence that upon being discovered on some of these forays he was asked to leave the premises, and at other locations he was excluded from the companies' premises. After his discharge in August 1977, Weed assisted Brown in this activity on other employer's docks. Brown also distributed the literature throughout the country on his runs as a line driver. This was at terminals, truckstops, and places where "Teamsters" gathered. This distribution was to the extent of waiting at busy intersections and stop lights where "Teamsters" often passed, and handing copies to drivers of passing trucks. It was Brown's claim that, by some undefined intuition, he could recognize a person on sight as being a Teamsters union member.

[4] On the basis of his demeanor as a witness as well as much of his testimony and writings I credit Brown only where he is not contradicted by reliable witnesses or independent documentary evidence. Independently, I come to the same evaluation of Brown's credibility as Administrative Law Judge Miller in *Teamsters Local 745 (Transcon Lines), supra*, that Brown's "testimony evidences a tendency to overstate or overly dramatize events." I have placed no reliance for discrediting Brown on his earlier criminal conviction. In agreement with the General Counsel, I find that the isolated 20-year old conviction is too remote to warrant consideration on the issue of credibility.

C. *Incidents Related to the Present Case*

1. The March 9, 1977, incidents

In early March 1977, Weed, Garland Moore, and Warren King had an encounter in the parking area at the Dallas Terminal. When Weed saw Moore, he asked Ben Johnson, a fellow employee, to stand where he could hear the conversation. A conversation ensued between Moore and Weed about a letter Weed had written to the President of the United States. The conversation was short, and Moore and King walked away. As they left Moore said something to the effect that Weed should "make sure [he] knows what he's talking about," or, "[he] better be able to prove it." The text of the letter is as follows:

> My name is Bill Weed. I am a member of Teamsters Local Union 745, in Dallas, Texas. I am writing this letter in behalf of another member of this local, who is afraid to be identified. The Yellow Transit Company and the Local Union offices here have entered into a conspiracy to deprive this man of his job, which would cause him to lose his pension. This man is 57 years old and has been working for the Yellow Transit Company approximately 30 years. He goes to work each day in fear. He has been threatened by the union steward on the job and by the officers and business agents and by the company. He previously filed a lawsuit with the Labor Department, which was summarily dismissed without an investigation. Here in Dallas, ex-officers of the Teamsters Union are holding prominent positions with the Labor Department, and there is no way that any rank and file member can receive any satisfaction from this Board.
>
> The reason this man came to me: I was a candidate for the top office here in the local union. The fear and physical violence that was used against me and my supporters kept us from carrying on a viable campaign. We then protested through the procedure set up in the union for such protest to take place, and after threats of physical violence and the actual use of physical violence at these hearings, they ruled against us. We then appealed to the International Executive Board and were denied any relief by that body.
>
> We then took it to the Labor Department, and after offering proof of intimidation, dishonesty at the ballot box, and even an indictment by the local Grand Jury here where a member of the leadership attacked me physically and destroyed portions of my automobile, we could not get any relief from the labor board. We then hired attorneys, and our case is now pending in the court. Since that time, I have been attacked physically on the dock at my place of employment, and have been discharged twice, but by representing myself, was successful in being reestablished on the job, but was forced to take loss of pay before I could gain my job back, and the local union failed in its obligation to see that money was paid to me.

For a year and a half now, I have been constantly harassed by the company and the union, by my insistence that the contract in existence between the company and union be adhered to, so this man at Yellow Transit came to me because he had been successful in fighting off the efforts by the company and the union to discharge me and to eliminate me from attending the local union meetings and raising questions about the questionable activities of the local union officers.

This man is in constant fear of physical abuse or abuse to his property such as his automobile, and the loss of his pension, because he can look around him and see many members in his age bracket who have been discharged when they were approaching the retirement age and failed to get their pension. The reason for the fear of this man is that in his previous effort to get representation he filed a case against the local union with the Labor Board, and of course this was dismissed, like all other complaints, here in this locality; and at that time, after he filed the case, he was threatened with physical, bodily harm, by the union steward, and was threatened with discharge by the company if he did not discontinue his efforts to seek redress for his grievances. I want you to know that what happened to this elderly man at Yellow Transit and what has happened to me in my efforts to clean this organization up are not isolated instances. There were three men who filed a lawsuit against the local and international union, approximately two years ago, one by the name of Larry Davis, and one by the name of J.C. Butcher, and another man, Jack Bateman. Both Davis and Butcher were discharged within a period of 60 days after filing the lawsuit, and have been blackballed ever since each time they acquire employment on one of the docks, and the union finds out about them working, they come down and have the company to lay them off. Mr. Bateman, on the other hand, was allowed to continue his employment after he was discharged and agreed to come before the local membership and recant his sins for filing this lawsuit, he is now still employed.

This local union has consistently violated the rights under the Bylaws and the Constitution of its members, and has also disregarded the Labor Management Reporting and Disclosure Act. We have a man now, whose name is Archie Brown, who was a member of this local union, and they transferred his place of employment from here to Oklahoma City, and he transferred to that local union, which was in accordance with the Constitution. His employment was again transferred back to Dallas, and he attempted to transfer his membership from the Oklahoma City local to the Dallas local 745, which is his constitutional right and obligation, but was refused the right to transfer into this local union because he refused to join the political organization of DRIVE; this being a violation of the law, and also the Constitution and Bylaws, shows the flagrant attitude of this local union with regard to the law, because they have nothing to fear with the present make-up of the enforcement division of the Labor Board that exists here in Dallas.

This type of treatment that I have mentioned here, is isolated instances, is constantly going on here in this local union. There is no hope for the membership to receive any relief from the local or the international union. Our only hope is for the Labor Department to take positive action here to see that our rights are protected. When any member makes any waves by filing charges with the Labor Department, the officers of the local union are immediately notified by the Department of Labor, and that member is not only harassed and threatened with physical assault and loss of job, but his family is then immediately subjected to threatening telephone calls—dirty telephone calls—to persuade the individual to withdraw his charges.

I am well acquainted with all the issues that you have before you, and know that you are extremely busy on other items of greater importance, but we have a membership of over two million members, and daily some of these members are being unjustly discharged, especially those who are approaching the age of retirement. The only hope we have is what you take some action through the Labor Department, the Justice Department, to see that these citizens who are members of the Teamsters Union do not lose everything they have spent their lives working for.

Except to the extent reported here none of Weed's charges of union misconduct is sustained by credible evidence.

At or about the same time, Lane became aware of the letter in a conversation with Moore. Moore told Lane he had been at the terminal to discuss the letter with Weed. Lane regarded the letter as a joke and solicited a copy from Moore. At or about the same time a copy was posted on the bulletin board by some unknown person; agents of Respondent East Texas did not post the letter. No permission was asked or given to post the letter. When discovered, it was removed from the bulletin board by agents of Respondent East Texas.

On March 9, 1979, Jim Sims directed Weed to make a city pickup of freight. This was a routine practice. Weed wanted to eat first; Sims told him to make the pickup first. Sims directed him to load a forklift in the trailer, take the forklift to the customer, use the forklift to load the freight, and return with the load. He explained that, "it was important to get the delivery." Sims directed Weed to brace the forklift by lowering the lift on a block of wood and setting the brakes. Weed rejected the suggestion and wanted the wheels chocked. Sims told Weed to do as he was told; Weed did. After he was loaded, he proceeded down Irving Boulevard to Mockingbird Lane where he had to stop for a light. He heard a popping noise as the forklift hit the front of the trailer. He pulled the trailer into a convenient restaurant parking lot, the restaurant where he always ate. He called the terminal and reported the incident. He then refused to proceed further until a mechanic nailed down the forklift, "like it

should have been . . . in the first place." While he was waiting, he ate.

After the mechanic nailed down the forklift, he was called back to the terminal. The damage was checked and the trailer was "red tagged." Weed completed his shift without further incident.

I credit Sims' denial that at any time on March 9, 1977, he threatened Weed with discharge because of his union activities.

2. The March 10, 1977, incidents

The next morning Lane first learned of the accident. Independent of this information, Lane directed Milton, city dispatcher, to call in unassigned workers to report to work at 9:30 a.m. instead of their 2 p.m. regular shift. Weed was in the group. Lane also instructed Milton to tell Weed to fill out an accident report "prior to going to work."

Milton called Weed and the rest of the crew between 7 and 7:30 a.m. in compliance with the contract. Milton conveyed Lane's message to Weed to fill out his accident report when he got there. Weed responded that he had an errand to run, but that he "would come out early enough that [he] could get it done on his own time."

Weed reported at 1 p.m.; he went to Lane's secretary to fill out the report. He was told Lane wanted to see him. Anticipating a problem, Weed waited for the assistant steward, Boyce Ross. When Ross arrived, the two went to see Lane. Lane questioned Weed about the accident and "insinuated" that "it wasn't because it was [not] blocked proper, but because [Weed] was doing excessive speed and . . . jammed on [his] brakes at the light." Weed denied Lane's claim. He maintained that it was caused by not being nailed down and that he had protested.

Under the collective-bargaining agreement, article 16, Weed had the right to refuse the assignment because of safety. In fact, Weed did so after the damage to the trailer. This would have forced Respondent East Texas to have the maintenance department check the claim; it would have also involved the safety department. There would have had to be a determination of *safe condition* before the unit could be moved. Then there would have been no liability to Weed. Lane claimed, "When [Weed] accepted the dispatch . . . he accepted full responsibility for the equipment." After hearing the explanation Lane decided to issue Weed a warning letter.

On March 21, 1977, Lane sent Weed a warning letter charging him with a preventable accident. Weed grieved claiming harassment and accusing the Employer of "building a file to try and discharge [him]." Respondent Local 745 protested the warning letter. Under the contract the grievance could not be heard until the Employer attempted to use it as a basis of discipline (suspension or discharge).

3. The late to work warning

During the same meeting Lane discussed Weed's tardiness. Lane told Weed that he was going to warn him about not reporting at 9:30 a.m. As Lane explained "Weed had the right to say, no I will not report until 2 p.m. . . . [or] I won't report for work at all, this will be one of my days off, but he was obligated to say whether or not he would report. Since he did not indicate to the contrary, we assigned him to work. He didn't report, and I gave him a warning letter."

The warning letter was issued March 11, 1977. Weed filed a two-page grievance, in which he made a broad attack on Respondent East Texas' motives. Respondent Local 745 protested the grievance. Because of the lost time, it was heard by the Southern Multi-State Grievance Committee on April 18, 1977. Weed was represented by Moore; the grievance was denied.

4. Weed's request for internal union information

On March 16, 1977, Weed made his first request to see the financial records and minutes of Respondent Local 745. The request was pursuant to the Labor-Management Reporting and Disclosure Act. On April 4, 1977, Haddock responded and agreed to show Weed the books on April 11, 1977.

5. The March 21, 1977, memorandum

On March 19, 1977, Weed failed to sign his timecard in violation of company policy. On March 21, 1977, Lane issued a short informal memorandum as follows:

> B. Weed—
>
> Please sign your timecard in the future.
>
> Thanks!
>
> Ted D. Lane

6. The second late-to-work warning

On March 22, 1977, Weed was 54 minutes late to work; he admitted the "human error." Weed explained that he had failed to check the bulletin board before he left work the previous day. A change in starting time was the result of Weed's bumping into a new position which required him to report at 8:30 a.m. instead of his previous starting time, 9:30 a.m. the same day. Lane issued a warning letter which stated:

> You reported for work 54 minutes late this date. You did not call your supervisor in advance of the start of your shift and advise him that you would be late and the reason.
>
> You are warned that a recurrence of this in the future will result in disciplinary action.

Weed filed a grievance on the warning letter. The grievance was considered in connection with the grievance-arbitration hearing on his subsequent discharge.

There was evidence that other employees were late to work. Charles Blount was late 14 times, 9 of which were for more than 30 minutes. Ben H. Johnson was late twice, once for 2 hours and 3 minutes. Gary Nelson was late twice for less than 10 minutes each time. Norman Roberts was late once for 51 minutes. Rodney Brookins was absent and late many times. There was no evidence whether or not any of these employees called their supervisor prior to the starting time and gave a sufficient

reason for the tardiness. There is evidence, however, that during 1977, Respondent East Texas issued 14 warning letters for late to work offenses. Also, Brookins was discharged in July 1977 because of the repeated absences and late to work episodes.

7. The March 31, 1977, incident

On March 31, 1977, Weed received a letter from the U.S. Department of Justice, the Chief, Governmental Regulations and Labor Section, Criminal Division. The text of the letter stated:

> This is to acknowledge your letter of February 7, 1977, to President Carter, a carbon copy of which was sent to Attorney General Bell.
>
> In light of the matters raised in your letter, we have taken the liberty of referring a copy of it to the United States Attorney for the Northern District of Texas. He will determine what further action, if any, is appropriate.
>
> Thank you for bringing these matters to our attention.

Weed made copies of the letter and took them to work. As he was walking along the dock toward the breakroom he passed Lane who was leaving the breakroom. Lane noticed the sheaf of folded papers in Weed's hip pocket and became suspicious. He returned to the breakroom after Weed and found the Justice Department letter posted between two newsletters which had been published by Brown. The bulletins were not further identified. Lane removed all those and had Sims bring Weed to the office.

A meeting was held between Lane and Sims for Respondent East Texas and for Weed and Boyce Ross, the assistant steward. A transcription of the meeting was as follows:

> Lane: I am having a record made of this interview because I do not want any misrepresentation made now or in the future about the matters discussed. Bill, you came in before you went to work today and put these on the bulletin board and I would like to ask you why?
>
> Weed: I put the white sheet on the bulletin board and gave the others to the other people—the Labor Department's answer from President Carter.
>
> Lane: No one has authorization to put any outside documents on the company bulletin board. You can't be allowed to do it. If you want to come in and ask me and if I agree then you can. The bulletin board is for company business.
>
> Weed: The board is the union . . . .
>
> Lane: The bulletin board will be utilized under the current labor contract. I have talked to you in the past and I want to restate that it is not my concern about your difficulties with your union or your union representative. My concern is the orderly conduct of the company's business at the Dallas terminal. I can't let you or anyone else do anything that disrupts the orderly conduct of our business. You are not to engage in any activity that disrupts our business.
>
> Weed: You better tell Baker that.
>
> Lane: This position that I have taken holds true with everyone. This is a place to work and I would like that passed along by your job steward and business agent that we will not allow it. I am putting you on formal warning to that effect and I hope that you won't.
>
> Weed: Everytime I get mail I have a registered letter. If you will quit sending me registered letters. They are because of my difficulty with the Union. Everytime Garland Moore comes out here, I get half a dozen registered letters. I have never done anything but do my job.
>
> Lane: That is your opinion, Bill. My opinion is stated in the letter. I can't allow you to do things that interfere with our business. I can't allow you to take action that interrupts our affairs. The bulletin board is utilized only for company business and certain authorized union business.
>
> Weed: So it's a one sided deal.
>
> Lane: We have a labor contract and we are going to abide by it. I am here to administer it. Is there any misunderstanding you might have about this? This position covers everyone. No one is supposed to post unauthorized material on the bulletin board.
>
> Weed: The contract provides the union can utilize the board . . . .
>
> Lane: The contract provides the union can utilize the bulletin board but we can't allow outside people to utilize it. The bulletin board in the break room is a company bulletin board.
>
> Weed: We can pass them out on Irving Boulevard.
>
> Lane: Yes, as long as it is not on company property and not on company time.
>
> Weed: I can't understand why you make the Teamsters fight your fight . . . by trying to fire me for their benefit.
>
> Lane: Bill, I could have fired you many months ago. My concern is to run the company's business at the Dallas terminal.
>
> Weed: I don't blame you there. I am not trying to buy in on your having a job here.
>
> Lane: We can't have unauthorized material on the bulletin board while we are trying to take care of the company's business.
>
> Weed: Then you better stop Garland Moore from coming out here and forcing his will. I want a record of my time. I got a letter from you for being 53 minutes late. My record will show that that was the first time in 10 years that I have been late. And while we are talking man to man, I didn't know I was late. I misread the bulletin. I was here at 9:00 A.M. It was my mistake but a man ain't God.
>
> Lane: I have had to take suspension action against two other employees for reporting to work late and I will not apply that any different to you from anyone else.

Weed: You haven't got an employee that has not been late at one time or another.

Lane: If you are going to be late, you have to call us.

Weed: I didn't know I was late.

Lane: I can't turn my head on your being late after I had suspended two other people for the same reason.

Weed: You have paid King and Baker for time that they never worked. Time and time again.

Lane: I don't know about that.

Weed: I'll handle it in Fort Worth with the Labor Relations Board on Monday morning. There will be an investigation this time. You bought into it when it was not your fight. I am going to do my job and follow instructions but there is going to be an investigation into that crooked outfit 745. Mr. Garland Moore has overstepped himself. He can't intimidate me. Dying doesn't scare me. I will abide by what you say but you are not going to stop Baker from putting his nose in my business. Bobby Green and this boy here are the job stewards. Baker has no business putting his nose in my business.

Lane: There is no need for us to get into a discussion about that. I hope that you understand it and that we won't have any further problems.

Weed: I am getting tired of getting registered letters for picky stuff. I was not late on that unassigned job. You had it set at 2:00. That man called me and said come out here and fill out an accident report and I'll tell him that to his face if you will call him in here.

Lane: You filed a grievance and it will be decided by the grievance board.

Weed: It won't be decided by grievance. It will be decided in Fort Worth [by the Labor Board].

Lane: That is your right. We have covered what I wanted covered. Is there any misunderstanding that you are not allowed to participate in any activity on company time that disrupts the orderly conduct of the company's business.

Weed: No. I will do my job.

Following the meeting Lane issued Weed a warning letter because he "placed three copies of an outside publication on [the] company bulletin board." He further cautioned Weed, "You are not to post any document on company bulletin board without my authorization. This is disruptive to the conduct of our business." Weed was warned, that "a recurrence of this or any other acts that disrupts the conduct of our business will result in disciplinary action and/or discharge . . . ."

8. The April 3, 1977, incident

Weed attended the regular monthly meeting of Respondent Local 745 on April 3. He was accompanied by Brookins and Boyce Ross. This meeting was uneventful.

After the meeting the trio left the union building. After going out the doors, they encountered another group of three men lounging against some cars parked in front of the building. One of the men called to Weed and identified himself as Bill Baker, steward at Yellow Transit. He then told Weed, "I have a letter that you wrote to the President and I will take care of everything at Yellow Transit."

He then asked Weed to identify the man Weed referred to in the February 7 letter. Weed refused to tell him. B. Baker then accused Weed of "sticking his nose in his [B. Baker's] business," and that "if Bill Weed did not stay out of his business, that he would make it his business."

The Weed trio walked around the northeast side of the building toward their car. The B. Baker trio and other bystanders followed to the corner of the building. There was some abusive and obscene language. Some unidentified person said to the Weed trio "that they would whip him [but] not in that nice of words." The Weed trio left the union hall area.

Moore, assistant business agent, was inside the closed glass doors to the union hall when the confrontation occurred. T. C. Stone was also present in the area. It cannot be concluded either Moore or Stone was aware of the incident or heard the conversation. Since any threat made occurred around the side of the building they could not reasonably be expected to have heard it.

9. The May 1, 1977, incident

The next regular monthly meeting was May 1, 1977. The General Counsel attempted to establish the incident through the testimony of Weed; Nichols; Greg Le Fevre, a television reporter for KDFW-TV; and Haddock's hearsay report.

The testimony of Weed, upon which the General Counsel relied, was the selective reportage of self-serving aspects of a single transaction, with the claim of a fifth amendment right against self-incrimination upon cross-examination as to anything else about the same incident. Under the circumstances, a motion to strike Weed's testimony about the May 1 incident was granted. Without considering the question of waiver, which could only be determined by another tribunal, the segmentary approach produced evidence which was not sufficiently reliable to be probative. Further, allowance of such a procedure would have denied Respondent Local 745 the opportunity "to conduct such cross-examination as . . . [would have been] required for a full and true disclosure of the facts." 5 U.S.C. § 556(d).

Accordingly, despite the General Counsel's reservation of the "right to raise the issue before the Board and the Courts should it become necessary," the ruling stands for the purposes of this Decision. Further, even if I were to reverse my previous ruling, I would discredit Weed's version on the basis of my earlier stated assessment of his credibility. Nichols' testimony is credited only to the extent he is not contradicted. Great reliance is placed on the testimony of Greg Le Fevre although he is not a witness to the entire transaction. Le Fevre is an independent witness who is also a trained observer.

The General Counsel offered the television interview of Haddock by Van Dunn, a television news reporter for KDFW-TV, as admissions against interest and for the truth of the matters reported. Both Respondents stipulat-

ed to its receipt. Thus, the hearsay evidence of the May 1 incident were given the weight of stipulated facts.

Prior to the meeting the news media was informed that some newsworthy event or demonstration would occur at the union hall on May 1 at or about 10 a.m. This was the time and date of the Union's regular monthly meeting. This information was the reason that the television news team was at the hall about that time. It is concluded that the information was given by Weed, Nichols, or Brown, or someone acting on their behalf.

Weed and Nichols attended the meeting together in Weed's van. Weed, who had no customary place to park, parked at the side of the access road a short distance to the west of the union hall block. They then walked along the access road and entered the union hall parking lot about where the alley intersects the access road. The parking lot was filled, with three rows of parked cars, campers, and pickups. It was then about 10 a.m. and many of the members were on the parking lot or making their ways to the entrance on the east side of the building. Unknown to Nichols, Weed had a nunchaku concealed on him and had left a shotgun in his van.[5]

As Weed and Nichols walked in the driveway between the outer two rows of vehicles they passed two unidentified men who were standing at the rear of a pickup about three to five vehicles from the alley. At that point there was a confused altercation.

According to Nichols, he and Weed were attacked without warning. Moore, who was then near the northeast corner of the block, recalled his attention being attracted by a yelled obscenity. Paul Castro, who was somewhere near the northeast corner of the union hall, became aware of the altercation only after it began. In the stipulated hearsay report Haddock stated:

> But what I'm told happened at the May meeting; the media was called during the week prior to the meeting on Sunday. I was inside the building, helping conduct the meeting as I normally do on the first Sunday when we meet.
>
> I'm told that Brother Weed, when he got to the meeting—then the new[s] media got there about the same time—Brother Weed pulled a karate chain out of his coat and hit a fellow with it. And the fellow took the chain away from him and hit him with it. And they had a pretty good scuffle.

The altercation was of very short duration, lasting only long enough for Weed and Nichols to be knocked down several times. The other participants in the scuffle were never identified. Although it was clear that neither was an officer of the Union, it was reasonable to conclude that both were members of the Union.

The fight occurred in view of a number of unidentified persons. Moore, assistant business agent, was toward the opposite end of the block near Jonelle Street. Castro, assistant steward at Transcon, was about 50 to 75 feet away from where his pickup was parked. Jack Tucker, steward at T and P, was at the northeast corner of the block. None of the spectators attempted to intervene in the fight or to stop it. After the short first round, Weed and Nichols retreated to curbside; the other two ran toward the union hall.

Nichols returned to the van and drove it to where Weed waited at the curb. Weed took a shotgun from behind the front seats of the van. He then returned to the parking lot walking quickly toward the union hall.

Nichols' testimony that Weed remained beside the van as he drove it along the access road is not credited. The other witnesses, including Le Fevre, refute the claim that Weed remained beside the van, shouting protestations that he would not allow a gathering group to tear up his van. On the contrary, it appears that most people on the parking lot "scattered like quail" when they saw Weed coming with the shotgun.

Haddock described the shotgun incident in his interview as follows:

> Then the scuffle was over and Mr. Weed left, I'm told. He returned a short moment later in a van pickup and came running out of it with a shotgun, threatening to kill some members that was there.

Larry Robinson, a member of Respondent Local 745 and an employee-assistant alternate steward at Southwestern Transportation, was confronted in the parking lot by Weed, who was about 20 feet away. Weed, who was armed at the time, said, "All you [expletives] . . . I'll blow your [expletives] . . . away." Robinson ducked behind a car.

B. Baker, a member of Respondent Local 745 and employee-steward at Yellow Freight, heard Weed threaten to "blow everybody's head off." Castro heard someone yell, "he's coming and he's got a gun." Castro ducked into his pickup cab and as Weed walked beside it he heard Weed say, "Run you [expletives] . . . . See how bad you are now." About that time Castro heard Weed operate the pump mechanism of his shotgun. This was the action necessary to load a round in the firing chamber.

Weed returned to his van momentarily, and he and Nichols left the scene. No shots were fired and no serious injuries occurred. I do not credit Nichols' report that Weed could not walk and only hobbled. Although the videotape of Weed at the hospital showed a very visible

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[5] The witnesses referred to the weapon as a nunchuk or karate chain. It has been described as follows:

> The nunchaku (nun-*chaw*-koo) is a universally hinged wooden flail which was converted into an effective weapons art by Okinawan farmers some 350 years ago. Basically, the nunchaku consists of two sticks connected by rope, nylon cord, or chain. There are many varieties now on the market, even though the weapon has been outlawed in numerous states.
>
> The nanchaku is considered one of the simple yet dangerous weapons. "The nunchaku is a versatile device," Newsweek reported. "When the connecting cord is wrapped around a victim's neck, the two sticks give even a weak assailant enough leverage to throttle his foe. When one stick is held in the hand, the other can be swung with fearsome speed and power." The nunchaku is said to be able to generate 1,600 pounds of pressure at the point of impact. However, some human bones when struck require only about 8-1/2 pounds of pressure to break. [Corcoran and Farkas, "The Complete Martial Arts Catalogue," Simon and Schuster, New York (1977), at 142.]

All parties agreed that the nunchaku has been determined to be a prohibited dangerous weapon under Texas law. Weed, a judo expert, conceded only slight familiarity with the weapon. In prior testimony in another tribunal he had described it as a "a little link chain."

limp, this was while Weed knew he was being photographed for television. Le Fevre noticed nothing unusual about his walk as Weed walked hurriedly through the parking lot with the shotgun. Further, no medical evidence was offered of Weed's claimed serious injuries.

10. The May 11, 1977, written warning

On May 9, 1977, Weed attempted to return to work after purportedly being off because of his injury. Early in the morning he called Terminal Manager Lane and told him "that his doctor had [orally] released him to return to work." Lane "reminded him of the company's policy that it [was] necessary that he take his written release to Dr. Cook [the company doctor] to secure a return to work order and to bring that with him at the hour of the day [shift] that he wished to return and he would be allowed to return to work." This was the same procedure required of Weed in 1974 after his previous sick leave incident. Weed expressed the desire to "come back to work." He went to Dr. Cook's office and after a wait was examined. Because he had no written release from his own doctor, he was sent back to obtain one. He eventually arrived at work 3 hours late for his shift. Lane told him he could not go to work because he was over 2 hours late. This was established policy.

On May 11, 1977, Lane issued a warning letter to Weed which stated:

> On May 9, 1977, you called on the telephone explaining that your doctor had released you to return to work. I instructed you to get a release from your doctor and take it to Dr. Cook to secure a return to work order. You did not take a release to Dr. Cook as instructed and the result was that you had to return to your doctor to secure the release and did not return to the terminal until 1700 hours May 9, 1977.
>
> This is a warning that failure to follow instructions in the future will result in disciplinary action.

Weed filed a grievance on the 5-1/2 hours he lost because he was not allowed to go to work at 5 p.m.

11. The May 25, 1977, written warning

At the end of the week of May 21, 1977, Weed failed to sign his timecard. This was a requirement at Respondent East Texas. It is the same offense he was counseled about on March 21, 1977.

There is evidence that some employees quite often fail to sign timecards. During the 17-week period between March 5, 1977, and July 2, 1977: Charles Blount failed nine times; Kenneth Hawley, seven; W. R. Merrill, six; Johnie Fink, five; Ben Johnson, four; William Weed, three; Wilburn Robinson, one; Perry Lang, one; Boyce Ross, one; and Gary Nelson, one. Before the initial warnings of March 21, 1977, failure to sign had averaged five a week; after that the average was reduced to two a week. Along with Weed, four other employees received written warnings on May 21, 1977. The warnings stated as follows:

> You did not sign your timecard for week ending May 21, 1977. Current instructions require all employees to sign their cards each week.
>
> This is a warning that failure to follow instructions in the future will result in disciplinary action.

Weed protested this warning letter to Respondent Local 745. This was also considered at the later grievance-arbitration hearing.

12. The June 5, 1977, incident

The next regular monthly meeting of Respondent Local 745 was at 10 a.m. on June 5, 1977. Again the news media received advance notice of a possibly newsworthy event. Additionally, the Dallas Police Department was alerted. Again, it is concluded that these calls were made by someone acting in behalf of Weed, Nichols, and Brown.

The General Counsel attempted to establish the incident through the testimony of Weed, Nichols, Ross, Police Officer N. G. Herron, and Police Sergeant R. E. Smith. Greatest reliance was placed on the testimony of Officer Herron. He was an independent third party witness who was also a trained observer. He saw the entire incident. Sergeant Smith was only a witness to subsequent events.

The television crew arrived early; there was an altercation. This altercation was not alleged as a violation and was not probative of the subsequent intraunion incident. It was, and has been disposed of as, a local police and civil action matter. Further discussion of the incident would serve no useful purpose in this proceeding.

The first of the participants to arrive was Boyce Ross. He parked at the north side of the hall. There were already a number of people milling around the union hall area. He went to the union hall and in to the meeting room. He then returned to the entrance to the building. After pausing there, he walked diagonally across the east parking area to Jonelle Street. He then walked south on Jonelle Street about 150 feet to where Weed, Brown, and Nichols were parked. No one accosted him on this walk. After a short conference, Weed, Nichols, and Ross started north on Jonelle.

About that time a marked police cruiser driven by Officer Herron arrived. He parked on the left side of Jonelle facing north, generally opposite the door to the union hall. Officer Herron exchanged greetings in a friendly manner with a small group standing under a tree on the parking lot.

Weed, Nichols, and Ross walked up behind the police car. Nichols walked up beside the right side of the car; he opened the door and initiated a conversation with Officer Herron by identifying himself. Jack Tucker came up beside Nichols and obscenely told him he was not going to attend the union meeting.[6] About the same time Officer Herron told Nichols to sit down and shut the door. As Nichols sat down with his right leg still outside the door, Tucker said, "Let me help you."

[6] The statement is uncorroborated and somewhat suspect because it was supposedly made in the presence of Officer Herron. In the absence of a denial, it is credited.

He then put his hands on the unframed window, which formed the top of the door, and pushed the door against Nichols' leg. When the door sprung back he pushed again. Officer Herron noticed a movement of the car. Nichols screamed, "He broke my leg." Officer Herron directed Nichols to get his leg in the car and stay there. When this was done, Officer Herron called for assistance. In a conversation immediately after the incident, Tucker told Officer Herron he was sorry about it.

Sergeant Smith responded and directed Officer Herron to arrest Tucker; Herron complied. While Officer Herron was occupied, Bill Bridges stuck his head through the open window next to Nichols and told him he would "take care of him" in Louisiana.[7] Several bystanders complained to the police, and as a result Nichols' car was searched for weapons. None were found.

After the incident, Weed, Nichols, Ross, and Brown left the area. Weed, Nichols, and Ross made no further attempt to attend the union meeting. There is no evidence of any serious injury to Nichols' leg.

13. The first intraunion changes against William T. Weed

On June 7, 1977, Alfred Cox, Jr., and Carl Branch, both members of Respondent Local 745, filed intraunion charges against William T. Weed pursuant to the International's constitution. The charges, which run at great length, set out numerous instances of alleged violation of Weed's constitutional duties and obligations of membership. On June 29, 1977, these charges were withdrawn at the request of Haddock. Notice of the withdrawal was given to Weed in a letter from Haddock.

14. The June 8, 1977, consultation

On June 8, 1977, Cecil Bailey, dock foreman for Respondent East Texas, was talking to an employee named Perez. There was apparent damage to two barrels which were part of freight being loaded by Perez. Bailey was questioning Perez about the damage.

Weed intervened and told Bailey that Perez did not do it. Weed's statement was based on his claim that the blades of the forklift were not wet. After the discussions with Perez, Bailey told Weed that he was not involved, that his comment was out of order, and that he should keep out of other people's business. There was no evidence or claim that Perez solicited Weed's assistance. No warning letter was given for the incident although a consultation report was prepared.

15. The camera solicitation episode

In early June 1977, Terminal Manager Lane heard that members of Respondent Local 745 were soliciting funds "to defend members who were involved in wrecking some TV cameras." On June 13, 1977, he confronted the assistant business agent, Moore, and King, steward at Respondent East. They denied that "there was a collection being made on [Respondent] East Texas property." Nevertheless, "they agreed to cooperate and see that one was not made." Lane prepared an informal memorandum and placed it in King's personnel file.

16. The June 15, 1977, late to work

On June 15, 1977, Weed was late to work. However, he called Walter High, a supervisor, at 1:45 p.m. before his shift began and informed him that he would be late to work. This was consistent with the policy and collective-bargaining agreement at Respondent East Texas. No warning letter or consultation report was warranted or prepared. No adverse inference as to Weed's employment status was claimed by Respondent East Texas in this late to work occurrence.

17. The June 16, 1977, incident

On June 16, 1977, Weed worked from 2 until 10:30 p.m. During the first half of the shift, Weed worked as a pickup and delivery driver. Bailey, the dock foreman, reported the incidents as follows:

> This was the day that Mr. Weed unloaded 9,200 pounds of freight is all he had unloaded in this four hours and when he had finished, I had put him into loading freight and we were winding up the day which was a little bit early and he hadn't cleaned up all of their freight and most of them were going to the restroom to wash up. I discovered that Mr. Weed had walked off and left his job unfinished, so I went to the restroom and got him and sent him back to finish up what I had instructed him to do.

Upon being confronted by Bailey in the restroom, Weed responded, "Well, Mr. Bailey . . . the guy that loads that trailer is in here . . . why are you picking me out of all these men?"

The following day Lane issued Weed a warning letter which stated:

> You reported for work at 2:00 p.m., June 16, 1977. Your shift begins at 2:00 p.m. and ends at 10:30 p.m., Monday through Friday. During the period you were on the platform your productivity was 2,866 lbs. per hour. This compares to entire ship productivity of 4,238 lbs. per man hour. The reason your productivity was so low is that you left work repeatedly for an excessive period of time going to and from the restroom. On one occasion you were found simply standing in the restroom.
>
> Interruption in our work and low productivity as a result of some on your part will not be tolerated. This is a final warning that a recurrence of this in the future will result in your discharge from the service of the company.

Weed filed a grievance on the warning letter; Respondent Local 745 protested the warning letter on June 23, 1979. This warning letter was considered in the later grievance-arbitration hearing.

[7] In the absence of a denial by Bridges this statement is credited on the testimony of Nichols.

18. The June 22, 1977, incident

On June 22, 1977, Weed called Respondent East Texas at 11 a.m. to report that he would be late. He was scheduled to report at 2 p.m. He informed the Company that he was subpoenaed by the Federal grand jury and did not know how long he would be at the hearing. Lane instructed him to call as soon as he knew how late he would be. He did not call; at 3 p.m. he reported to Lane at the desk. Lane asked why he had not called as instructed. Weed responded "that he was in a hurry to get to work in order to beat the two hour deadline." He was given his timecard and was directed to Jim Sims for work assignment.

No warning letter or consultation report was prepared. The incident was reported in the September 20, 1977, meeting of the Southern Multi-State Grievance Committee as part of Weed's 6-month work history.

19. The June 30, 1977, consultation

About midnight on June 30, 1977, Lane was at work as vacation substitute dock foreman. He observed Weed and James Olsen, another dock employee, engaged in conversation near the number 10 and 11 doors on the dock. Olsen had already checked in; Weed had either clocked out or was about to clock out.

Lane approached the two men and directed Olsen to go to his work area. He then directed his remarks to Weed as follows:

> I [have] done everything that I know how to get [you] to refrain. from stopping people in the work area, and that [you] was forcing me to—into a situation to terminate [you], and I did not want to do it.

Weed denied he was at fault and claimed that "people was coming to him and wanting to talk." Weed then left the dock.

Lane issued consultation reports on both Weed and Olsen. The Weed report read as follows:

> I talked to Weed about standing and talking with fellow employee James Olson. I told him that I had done all I could to keep him on the job and that he was forcing himself into a termination situation and that if he did not cease and desist talking to employees while at work he would not have a job. [Weed] stated that Olson came up to him but that he would just keep walking in the future and wouldn't talk to anyone.

No warning letter was issued to Weed or Olsen. The incident was reported in the Weed's September 20, 1977, grievance meeting.

20. The July 13, 1977, consultation

On July 8, 1977, Weed was assigned to pick up a load, which consisted of a substantial number of pieces. He picked up the load. Upon its eventual delivery on the West Coast the load was short.

Where a shipment has a great number of pieces, Respondent East Texas has a standard procedure of tallying the load. There is a standard tally sheet form available for use by driver or checker. This procedure is of long-standing use by the Company. Weed did not follow the standard procedure in preparing the tally sheet. Despite Lane's claim that "all drivers are to count their freight and be sure that they got everything they sign for on the bill of lading," Weed stated, ". . . we hadn't been instructed no certain way to mark the tally sheet. Just count the freight."

On July 13, 1977, Lane talked to Weed about the shipment and the tally. He went over the instructions with him. He told Weed, ". . . am I going to have to give you a warning letter to get you to properly fill out tally sheets in the future?"

Weed responded, "No, I'm sorry. I'll be sure to do it properly in the future."

Lane prepared a consultation report which stated:

> Improperly prepared tally sheet at A.R.D. Mfg. Company, July 8, 1977. Failure to follow instructions.
>
> Weed stated he thought he prepared [it] correctly and agreed that he would follow company instructions in the future without it being necessary to issue warning notice or take any other disciplinary action.
>
> Recommended Followup:
>
> Termination on any future failure to follow instructions.

No warning letter was issued; the incident was discussed at the September 20, 1977, hearing.

21. The July 28, 1977, consultation

On July 28, 1977, Weed was directed by Dock Foreman Standifer to load a shipment of CBS records at the number 101 door. Instead of going directly to the 101 door, he went to the other side of the dock and down the dock from the door 7 to the door 1. He then went over to the scales near door 7, and stopped to talk to Tyrone Taylor, another dock employee. He "had some conversation with Mr. Taylor of a short duration . . ." and he then crossed the dock to the 109 door, walked down the dock to the 101 door, and went to work.

Lane, who observed the incident, went to Weed with Standifer. He "asked Mr. Weed why he had walked the most circuitous route and stopped to engage in conversation prior to going to the work area. [Weed] explained that he misunderstood the instructions, thought Mr. [Standifer] had told him to go the one door, instead of 101, walked around and asked Mr. Taylor where the records were. Taylor replied that they're at the 101 door." Mr. Taylor was called over and confirmed Weed's story.

No warning letter was issued; however, a consultation report was prepared. The report states as follows:

> Supervisor [Standifer] instructed Weed to go to 101 door and load records. Weed walked past 7, 6, 5, 4, 3, 2, 1 and around scales and got in conversation with Tyrone Taylor and then walked past 109, 108, 107, 106, 105, 104, 103, 102, 101 and began

loading freight. I advised Weed that once again I was warning him about abuse to company time and stopping other employees from work to talk.

EMPLOYEE COMMENTS:

He had one door on his mind. He was human and made error. Accused me of allowing other employees to do what I would not allow him to do. Only mentioned to Tyrone Taylor that he was going to 101 door. Taylor directed him to 101 door.

RECOMMENDED FOLLOWUP:

Termination.

In explanation of the recommended followup the following colloquy occurred:

Q. [Mr. Ellis] Sir, were you serious when you put termination down as the recommended followup for Mr. Weed on this instance?

A. [Mr. Lane] Sir, that was my feeling that I had reached after all this time. I had given him every opportunity that I could give him. I had asked him repeatedly to stop interfering with the people who were at work and I did intend to terminate him if he did not refrain from that activity.

22. The August 10, 1979, discharge of William T. Weed

The discharge of Weed had its origin in the discharge of Rodney Brookins, hostler for Respondent East Texas. Brookins was discharged by Lane in early July 1977, for failing to report for work July 4, 1977.

Following Brookins' discharge, Brown went to the Dallas terminal where he met with Lane. Brown demanded to know the reason for the discharge. Lane took the position that it was not Brown's affair. Later, Brookins filed a grievance on his discharge. The grievance was scheduled to be heard by the Southern Multi-State Grievance Committee in August 1977 at Biloxi, Mississippi.

In early August 1977, Weed decided to begin a collection for Brookins. About 1 p.m., August 9, 1977, Weed announced to a group of six or seven employees in the breakroom "that I was taking up money for Mr. Brookins." Weed was scheduled to begin work at 2 p.m.

Immediately after they began work, on August 9, 1977, Weed and Gary Nelson, another dock employee, were standing on the dock, sorting bills of lading on a shared barrel head. Weed "asked [him] if [he] would like to give a contribution for Rodney Brookins' grievance." Other employees and Dock Foreman Cecil Bailey were around within earshot. The conversation lasted "around 30 seconds." Nelson did not make a contribution at that time.

Again at 4 p.m. Weed was in the breakroom with other employees on a break. Sims, the dock foreman, was also present. Sims testified: "I had knowledge from seeing Mr. Weed taking up a collection for Mr. Brookins and I mentioned to him—I said Bill I don't recall the exact words I said other than Bill you shouldn't be taking up that collection on company time or in a work area." Fink, another employee and a Charging Party in this consolidated proceeding, recalled that Weed was approached by Sims who told him, "Now, look, you know they have given you a letter before and they'll give you another one, and they're going to fire you if they catch you taking up a collection on the dock."

Later during the same shift Sims noticed Weed's absence from the work area for about 20 minutes. He reported to Lane that Weed had been in the restroom about 15 to 20 minutes. He also told Lane about cautioning Weed about the collection. Sims then went to the restroom and found Weed "horseplaying with Mr. Castro," another employee. Also during the same shift Sims went up to Weed's work area at the 51 and 52 door on the dock. Weed solicited a contribution from Sims. Sims "told him again . . . don't do that."

During the morning of August 10, 1977, Lane was approached by R. Baker, an employee, who complained "in a fairly loud voice" about Lane allowing Weed to take up a collection in a work area after denying Baker and others the privilege of doing so in the "camera" collection during June. Lane agreed to investigate. Shortly thereafter Charles Blount, another employee, went to the office and told Lane "that he was concerned, he knew he had violated a rule. He wanted me to be aware of it; and he told me about it."

The story Blount gave was that at or about 7 p.m. on August 9, 1977, he was approached and solicited by Weed in the area of the 50 and 51 doors on the dock. Both Blount and Weed were on worktime; Blount agreed to contribute. Weed saw the dock foreman coming their way, and he told Blount to "go on and he would get the money later." Blount went and got some change. He then went back to Weed who was still working in the 50–51 door area. To avoid detection by someone approaching, Weed told Blount to go down off the dock and hand the money up between two trailers which were spotted at the 50–51 doors. Blount did so and put his name on a list Weed was keeping.

At 2 p.m. when Weed reported for work, he was directed to report to Lane's office. Also present were Lane, Sims, King, steward Ross, assistant steward, and Norman Roberts, an employee. Roberts was there at Weed's request. They all sat down. Lane asked Weed if he had taken up a collection on behalf of Rodney Brookins in work areas during the shift on August 9. Weed denied it and claimed he had solicited only in nonworking areas. Lane reported the meeting, as follows:

[Weed's denial] come in the face of information that I had to the contrary. He lied about the circumstances and it was because of that, that my decision to terminate him came into play.

I told him that I'd had a long experience with him interrupting people, abusing paid-for company time, and that I would not go any further with it, that he was terminated.

King argued forcefully with Lane about the discharge, that if he was discharging Weed for the reported incident, then he should terminate others also.

Lane responded, "Warren, my position is that we're terminating him for abusing the time. We're terminating him for interfering with other people's work. I won't discuss it any further with you. You have your recourse under the contract and I recommend you take it."

Lane had Weed wait until his final paycheck was prepared. He was then paid off and left the terminal. Lane also prepared a consultation report for Blount's personnel folder.

The next morning Weed met with his assistant business agent, Moore, and his steward, King. The meeting was transcribed. Weed agreed that Moore should represent him because Moore did his job about as well as anyone could do it. The meeting was preliminary and explanatory since the formal discharge letter had not been received.

During the same period Respondent East Texas also conducted an investigation. Kenneth Matthews, director of industrial relations, was in charge. Consistent with the practices under the collective-bargaining agreement, Moore was permitted to be present and participate in the interrogation of employees Manuel Prado, Gary Nelson, Norman Roberts, and Henry Coleman. Weed wanted personally to participate in these interviews. Because of the Union's inability to reach Weed, this was not accomplished. The procedure was to establish a basis for the admission of the statements by the Southern Multi-State Area Grievance Committee. Respondent East Texas also took statements from R. Baker and had the preexisting statement from Blount. These were not taken in the presence of a representative of Respondent Local 745.

On August 12, 1977, Weed again met with Moore at the union hall. By that time the discharge letter had been received, which stated:

> Please be advised that you have been previously warned by warning letters and oral interviews on the dates of March 31, 1977, June 8, 1977, June 30, 1977, and July 28, 1977, for disrupting the work force on your shift, which constitutes abuse of company time and failure to follow instructions. On August 9, 1977, you again spent portions of your entire shift in soliciting of funds for a fellow employee, resulting in not only poor production for yourself, but the entire work force.
>
> It is for the above reason we have no alternative but to discharge you under Article 46 of the current Local Freight Forwarding Pickup and Delivery Supplemental Agreement.

Upon receipt of the discharge letter, Weed formally filed his grievance which detailed his claims against Respondent East Texas. When he filed the grievance he had a second discussion with Moore about the procedure.

23. The unfair labor practice—grievance process situation

At the time of Weed's discharge and grievance, the charge against Respondent East Texas in Case 16–CA–7132 was already filed. This 8(a)(1) and (3) charge related to warning letter of March 9, 1977, and the solicitation rule. The complaint was issued and the hearing was scheduled for September 19, 1977.

On August 22, 1977, Weed filed another charge against Respondent East Texas in Case 16–CA–7430. The 8(a)(1) and (3) charge updated the previously alleged conduct and added the allegation of a discriminatory discharge.

On September 15, 1977, a Board agent fully explained to Weed about his rights in the election of whether to proceed through the contractual grievance procedure or through Board processes. Weed understood those rights; he voluntarily elected to contest his discharge and the other alleged violations by resort to the grievance-arbitration procedure of the collective-bargaining agreement. The election was in accordance with *Dubo Manufacturing Corporation*, 142 NLRB 431 (1963). Following this election, the Acting Regional Director for Region 16 of the Board deferred action under *Dubo* and *General American Transportation Corporation*, 228 NLRB 808 (1977). The parties were further informed that any subsequent review of the cases would be pursuant to *Spielberg Manufacturing Co.*, 112 NLRB 1080 (1955).

24. The contractual grievance-arbitration procedure

The grievance-arbitration is pursuant to the National Master Freight Agreement, article 8, and the Southern Conference Area Local Freight Forwarding Pickup and Delivery Supplemental Agreement, articles 44 and 45. The Southern Multi-State Grievance Committee is the final step of the grievance procedure as far as that procedure applies to any grievance in this case.

The Southern Multi-State Grievance Committee met to consider grievances during the week of September 19, 1977, at Biloxi, Mississippi. The committee which considered Weed's grievance was made up of D. Graves, J. Sarrow, and B. Ozment representing the operators, and W. Smith, A. Johnson, and L. Watson representing the Union. Moore, acting for Respondent Local 745, represented Weed; Weed also represented himself. Matthews represented Respondent East Texas

Moore read to the committee Weed's grievance which detailed his employment and union activities. The grievance reported these in light favorable to Weed. Pursuant to his arrangement with Moore, Weed then assumed the primary responsibility of presenting his case. After his original presentation, Moore only participated to the extent of supporting Weed on some procedural matters and in explaining Respondent Local 745's participation. There is nothing to indicate that Weed sought or was denied representation or counsel by Moore.

In his presentation Weed accused R. Baker of engaging in solicitation on company time, and further that R. Baker was his "political enemy." At that point committeeman Smith responded:

> I think that it's now time that I make some type of . . . remark on the record in relationship to who may or may not be your political enemy. This committee is not interested in . . . to the extent to who or who may not be politically motivated for a particular job. It is the Committee's obligation to en-

force the contract and terms that were negotiated by the negotiating committee. This committee is not interested in who may or may not be politically motivated for a particular job.

* * * * *

I didn't in any way try to stop you . . . from entering anything into the record that you feel may be important to your defense. But, I'm saying to you that politics . . . either civil politics, Local Union politics, county politics, is not part of the contract as far as we are charged with obligation to enforce it.

Weed explained to the committee his injection of his political relationships into the grievance hearing, in the following colloquy with committeeman Smith:

Well, Mr. Chairman, I'd like to state for the record that the only reason that . . . the reference to this was made as to him being a . . . political enemy, the only way I can explain it why . . . a good fellow Teamster would try to get another fellow Teamster . . . would go to the Company and try to get another fellow Teamster fired off the job, that . . . that's the relevance of . . . putting in the last statement.

Smith: I understood why you were doing it. But, I thought it deserved an explanation as to the views of the Committee.

In the discussion of the discharge for solicitation by Weed on company time on the dock, the following exchange occurred:

Smith: We've got some question we want to ask I'm sure. . . . Is it your testimony Mr. Matthews, that you have never knowingly permitted the solicitation of money for any purpose on your dock during working hours?

Matthews: Yes sir.

Smith: And you introduced into the record where a previous number involved in some kind of allegation, that there were people trying to solicit money for him and you stopped him and informed the Union that it wouldn't be permitted?

Matthews: That is correct.

Smith: It is your testimony that you did not treat Mr. Weed any different as you would treat anybody else?

Matthews: That is correct.

During the presentation the March 31, 1977, incident was raised as follows:

Weed: Okay, these documents . . . that I posted let . . . I want the record to show that these are the Union bulletin boards in the break rooms, in a nonwork area and I was informed by the . . . [National Labor Relations] Board according to its previous ruling that I had as much right for Union business to these boards as anyone else. Due to the National Labor Relations Board past ruling. And I maintain that these bulletin boards was all in nonwork areas, none were accessible to where any work was going on. And these publications was in answer to a letter . . . that I wrote to President Carter. That letter was sent back through the Local Union and highly circulated to all Union people. It was circulated to every Union dock in town, copies of that letter was made. This was a private personal letter, and they were posted on all Union bulletin boards over town, with the consent of the Company. And my . . . outside publication was the answer from President Carter of that letter, which came from the . . . Labor Department.

Smith: Let me see if I understand you, you readily admit posting it, but you stand on your rights to do so?

Weed: Yes sir. I do.

The committee then went through each of the incidents between March 10, 1977, and the discharge August 10, 1977. In each instance Matthews stated that other employees in the same situation would have received the same discipline. Matthews stated, "It is my testimony that we have not singled out Mr. Weed. That other people have been disciplined accordingly."

Upon being asked for a response by Respondent Local 745 or Weed, Weed stated as follows:

Well, I say that he is lying, because he can't prove, because it's a fact. He hasn't issued any warning letters for being late. He hasn't issued any warning letters for low production, because . . . I know the people out there, and they haven't received any letters, and he can't produce any letters to that effect other than to myself. And it's only his word that he done it. Because I know all of these people out there are my personal friends and . . . and the fact is they came to me with their problems if they get a registered letter they came to me with it. . . .

Weed then made a long rambling statement of his problems. During an interruption Smith asked Moore if Respondent Local 745 was protesting all six warnings which were issued since March 10, 1977. Upon receiving an affirmative answer, Smith explained for the record, as follows:

. . . that the Committee policy and the Union policy is that under the contract if the member employee is issued a warning letter that the member has the right to protest the warning letter, it is not heard until such time as the warning letter is issued against the member, at that time the Committee has a right to hear the testimony in relationship to warning letter. We're now hearing to determine . . . in the committee's mind if the warning letters were justified under the contract.

During the grievance hearing Weed was allowed to submit statements he had taken from other employees. This was a deviation from the committee's established practice. Normally statements taken out of the presence

of the other party are not admitted. This is the procedure followed by Respondent East Texas when it took its statements in the presence of representatives of Respondent Local 745. Weed's statements, however, were taken by him out of the presence of representatives of Respondent East Texas. In part this exception was granted because Weed argued that he did not personally participate in the interrogations of witnesses by Respondent East Texas. It is apparent that his representative did.

At the close of the hearing the committee went into executive session to discuss its decision. Subsequently they reported a decision as follows:

> It is the decision of the Committee that Weed was properly warned under the contract for acts which disrupted efficient operation of the Company. It was further the decision that the collection of money on company time was disruptive to the Company's operation and did constitute abuse of paid for time and the decision of the Company is to deny the claim of the Union. Cost to the Union.

26. The settlement agreements

The parties stipulated to the facts related to the settlement agreements. On September 15, 1977, Nichols executed a settlement agreement in Case 16–CB–1279. On September 23, 1977, Haddock, as agent of Respondent Local 745, executed settlement agreements in Cases 16–CB–1255, 16–CB–1256 (Weed), and 16–CB–1279. At the time that Haddock signed the agreement, the Board's standard settlement agreement forms and notices were altered to reflect the joint application of the Nichols agreement and the Weed agreement. Weed refused to sign the settlement agreement in Cases 16–CB–1255 and 16–CB–1267. On September 26, 1977, the Acting Regional Director approved the bilateral agreement in Case 12–CB–1279; at or about the same time, the Acting Regional Director approved the unilateral agreement in Cases 16–CB–1255 and 16–CB–1267. By letter of September 30, 1977, Weed protested to the Acting Regional Director over the Region's handling of all the cases where he was involved. The letter included a protest of the approval of the settlement agreements. There is, however, nothing in the record to indicate that Weed appealed the approval of the settlement agreement to the General Counsel.

On September 21, 1977, Respondent Local 745 posted notices to members in all these cases. The notices, which were the same, stated in material parts as follows:

> WE WILL NOT threatens to physically assault or commit physical assaults on any of our members in retaliation for their intra-union activities and/or to prevent them from attending union meetings.
>
> WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights under the National Labor Relations Act, as amended.

The notices remained posted for the required 60-day period, and on December 8, 1977, the Case 16–CB–1279 was closed on compliance. There is nothing in the record to indicate the same disposition in Cases 16–CB–1255 and 16–CB–1267. On April 26, 1978, the Regional Director set aside the settlement agreement in Case 16–CB–1279.

27. Weed's picketing of Respondent East Texas

For approximately 2 or 3 weeks beginning September 22, 1977, Weed picketed the Norwood Road and Irving Boulevard entrance to Respondent East Texas' Dallas terminal. This entrance was used by employees of Respondent East Texas as well as employees of other employers. At various times Weed was assisted in picketing by fellow dischargee Rodney Brookins. Weed was also assisted at least 1 day by his daughter.

Various crudely hand-lettered picket signs were used. The seven signs read as follows:

I THINK
TEAMSTERS
LOCAL 745
AND E.T.M.F.
UNFAIR

UNFAIR
TO BILL WEED
THIS IS NOT A PICKET TO PREVENT YOU
FROM GOING TO WORK
I BILL WEED HAVE THIS DAY FILED UNFAIR LABOR
PRACTICE CHARGES AGAINST BOTH (E.T.M.F.)
(TEAMSTERS) LOCAL UNION #745 FOR FRAMING
ME.
THIS IS AN ADVERTISING SIGN

THIS COULD HAPPEN
TO YOU
BECAUSE OF LACK OF REPRESENTATION
FROM THE TEAMSTERS HALL
SO SUPPORT
EACH OTHER
OR LOSE YOUR UNION

TEAMSTERS LOCAL 745
ARE YOU FIGHTING
FOR MY DADDY'S
JOB!!

FRAMED
BY
TEAMSTERS
AND
E.T.M.F.

FOR ADVERTISING ONLY
E.T.M.F.
AND
TEAMSTER LOCAL 745
FRAMED ME

EAST TEXAS MOTOR FREIGHT FIRED BILL WEED. WHY? COULD IT BE BECAUSE HE SOUGHT ELECTION TO SECRETARY-TREASURER TO TEAMSTERS LOCAL 745?

BILL WEED REGRETS THAT HE HAS ONLY ONE JOB TO GIVE FOR HIS TEAMSTERS BROTHERS OF LOCAL UNION 745

On September 22, 1977, Respondent East Texas sent a telegram to Respondent Local 745 informing them of the picket. The telegram also referred to a claimed violation of paragraph 2, section 2(b), of the collective-bargaining agreement; threatened discipline of those who, "honor this unauthorized picket"; threatened to sue for any damages resulting; and sought compliance by Respondent Local 745 in termination of the action. There is no evidence that any employee of Respondent East Texas or any other employer honored the picket and refused to work or make pickups or deliveries to Respondent East Texas's Dallas terminal. There is evidence that some drivers called the union hall before crossing the picket line. These drivers sought information on whether it was an authorized picket line.

28. The picketing of the Teamsters Piland testimonial dinner

During October 1977 a testimonial dinner was held for Richard Piland of Respondent Local 745 at the time of his retirement. Frank E. Fitzsimmons, president of the Teamsters International, attended the dinner. Weed, Nichols, and Brown picketed the dinner. The picket signs they carried accused the Teamsters International leadership of selling out the members and of being "Mafia types."

29. The January 14, 1978, Haddock-Brown conversation

On January 14, 1978, Haddock telephoned Brown.[8] It appeared from the conversation that Haddock originally intended to wheedle information from Brown. Brown appeared to have accepted the challenge and sought to entrap Haddock into some admissions or statements. The conversations lasted for well over an hour as each party maneuvered for political or legal advantage.

They discussed the investigation by the Federal Election Commission of Respondent Local 745 as Haddock openly sought information. They talked of Brown's claimed denial of transfer to Respondent Local 745 because of his refusal to join D.R.I.V.E. Haddock denied a tie-in between mandatory membership in D.R.I.V.E. and membership in Respondent Local 745. When they proceeded to Haddock's political future in Respondent Local 745 the following exchange occurred:

> Brown: (Laugh) Well, you know, uh you were the present uh whatever you call it, officer, you know.
>
> Haddock: And the future too.
>
> Brown: You'll never be no future officer Charlie, Charlie. . . .
>
> Haddock: Yeah, I am too. . . .
>
> Brown: You think so?
>
> Haddock: You better hope I am.
>
> Brown: I better hope you are?
>
> Haddock: Yeah.
>
> Brown: Why?
>
> Haddock: You just had.
>
> Brown: Why? You wouldn't be threatening me would you?
>
> Haddock: Oh naw, naw I'm not threatening you, I'm promising you.
>
> Brown: You're promising me?
>
> Haddock: Yeah.
>
> Brown: In other words, if you're not something's going to happen to me, huh?
>
> Haddock: No. I ain't telling you anything like that. Naw. You got that old recorder on?
>
> Brown: No, No, No, I'm . . . on, No, my recorder is not hooked up.
>
> Haddock: Well, turn the [expletive] off.
>
> Brown: I don't have it on.
>
> Haddock: You're just spending money for tapes, that's all.
>
> Brown: I know, nah, I don't have any more tapes, those are. . . .
>
> Haddock: Naw, I'm just, do you need some?
>
> Brown: Tapes? Nah, I don't record anymore.
>
> Haddock: Well, what happened to that old lawsuit?
>
> Brown: Which one.
>
> Haddock: That one you all was trying to get up.
>
> Brown: I never did intend to have one.

After a lengthy conversation about lawyers, they got back to their relationship and Brown's complaint to the U.S. Postal Service inspectors about Respondent Local 745. Again, neither appeared to yield position or information. They then talked of various litigation of common interest and the projected cost of bonding all stewards if litigation went against Respondent Local 745. In discussing Brown's appearance in a criminal case against Jack Tucker, Brown said that he was "just gonna tell them the truth." Haddock responded, "you better be damn sure you tell the truth, if I was you, I would." They then moved to the subjects of PROD, truck deregulation, and right to work. They then returned to a more parochial subject of the discharge of a driver at Santa Fe and chances before the grievance committee.

Then Haddock again tried to pump Brown for information:

> Haddock: What was, what was you and old Weed doing yesterday?
>
> Brown: Yesterday?
>
> Haddock: Yeah.
>
> Brown: Let's see yesterday what was we doing? I didn't see Bill yesterday.
>
> Haddock: Aw, don't go lying to me now Archie.
>
> * * * * *
>
> Brown: Well we—there was two or three people have—we had a . . .
>
> Haddock: Had a meeting?
>
> Brown: Well, we had to get some things together have . . .
>
> Haddock: Strategy meeting?
>
> Brown: Something like that.
>
> Haddock: Well, how did it come out?

[8] Consistent with his established practice Brown recorded the conversation.

Brown: Well, uh, we had some legal stuff, you know, uh, we're going to move you people out down there, Charlie.

Haddock: When you going to do it?

Brown: November or December.

Haddock: Oh, Oh, you gonna wait until then?

They then returned to discussing various investigations and litigation where either or both were involved. This led to a wide ranging conversation of law, lawyers, courts, justice, the Board, and Respondent Local 745. Neither had a high opinion of lawyers. Then moving on to more substantive matter, they discussed Brown's leaflet campaign, Weed's picket at Respondent East Texas, and their picket at the Piland testimonial dinner. At several points Haddock expressed interest in Don Vestal and his relationship with the Teamsters International. This led to this extended dialogue:

Haddock: Now you-all gonna try to help turn this [expletive] . . . over to him.

Brown: We know . . . they wasn't . . . they, hey . . . .

Haddock: Hey, you think if Weed run this [expletive] . . . you think Weed would run it or Don Vestal?

Brown: Let me tell you something.

Haddock: No—answer my question.

Brown: Vestal . . . uh . . . I'd . . . I'd . . . you know what? Weed . . . uh . . . Weed.

Haddock: Well, you . . . can't . . . .

Brown: Now . . . you hang on a minute . . . .

Haddock: . . . If Weed run . . . .

Brown: . . . Weed had no intentions, not one time . . . .

Haddock: He ain't running it, no, because he ain't got sense enough . . . .

Brown: No.

Haddock: . . . to run it.

Brown: . . . he never did have no intention of running . . . .

Haddock: Vestal is using him, see . . . .

Brown: He never did have . . . to use Vestal . . . uh . . . down there. He knows what Vestal is.

Haddock: That's . . . he . . . he knows he's a money grabber. He couldn't trust him.

Haddock: Weed does?

Brown: Weed does?

Brown: Up to a point, yeah.

Haddock: Aw, he didn't know it. He didn't know it. He didn't know it till a little while back. Naw, he didn't. But I tell you what, I think he probably knows Vestal used him now, Right?

Brown: Well, I told Weed before . . . I told him Vestal's . . . uh . . . .

* * * * *

Haddock: Aw [expletive] I don't want to go further on up the ladder. What do I want to go further on up the ladder for? I like being with the rank and file.

Brown: I tell you what, I suggest you better get with 'em 'cause you been away from them awhile, far as I'm concerned.

Haddock: I'm pretty well with 'em. But . . . anyway, you better hope and pray.

Brown: Hope and pray that what?

Haddock: That I don't lose.

Brown: Charlie, I . . . don't even understand what . . . what you're . . . uh . . . .

Haddock: Ain't no threat, I'm just telling you, you know, uh . . . .

Brown: But if you were to lose, what would happen?

Haddock: I don't mean it as a threat of any kind. I'm just saying you better hope and pray I don't lose. Cause if I happen to lose, I think you'd feel awful bad about it.

Brown: I'd feel awful bad.

Haddock: I think so. I think you . . . you know, even though you help beat me and get me out, I have to think you'd feel bad, is what I'm saying. So I'm saying, you better not do it, Archie.

* * * * *

Brown: I . . . I have every intention of trying to . . . uh . . . .

Haddock: Beat me, Right?

Brown: Now see, now you . . . you're taking it personal. I don't look at it as personal.

Haddock: Well, I do. Yeah, I'm looking at it personal.

Brown: Yeah, now, I have every intention in the world of . . . uh . . . uh, of removing every officer in the local union down there.

* * * * *

Haddock: It ain't gonna happen. But you better hope and pray it don't.

Brown: You know what, Charlie? That's not . . . you know, there's not . . . you know, there's only one thing I fear, and . . . I tell you . . . .

Haddock: If it happens, friend, I'm telling you . . . you ain't gonna enjoy it. You ain't gonna enjoy it.

Brown: Well, I fear one thing . . . .

Haddock: You better be governed accordingly, Mr. Brown.

Brown: You better be governed accordingly.

Haddock: Well, I tell you what . . . uh . . . you better be prepared for it because I tell you what, I think you'll go out . . . you and Rogers and Prda. . . .

Haddock: I am telling you. You better hope I don't . . . .

Brown: And, uh—

Haddock: You better work this ticket, that's what you better do.

* * * * *

Brown: What?

Haddock: You better see to it that . . . you better do everything you can to see that I don't leave. That's what you better do.

Brown: Well, there's no way . . . I can't make trouble by . . . by . . . uh . . . campaigning against . . . uh . . . uh . . . happen so I can . . . .

Haddock: No. I'm telling about the way you'll feel about it if . . . if it happens, now, you know . . . the way you'll feel about it.

Brown: How can it hurt me by . . . by you leaving down there? Or any of you leaving down there?

Haddock: Well, I think . . . I just think you'll feel bad about it and probably get despondent . . . by it, you know.

Brown: You mean have a . . . .

Haddock: By taking care of . . . .

Brown: . . . a remorseful feeling about it?

Haddock: Yeah.

Brown: Remorse . . . .

Haddock: You'll have a . . . you probably . . . I think you'll get despondent and have a nervous breakdown and everything from it.

Brown: You think so?

Haddock: Uh huh. That's the reason I'm saying you, you better not do it, see.

Brown: In other words, you better hope I . . . you'll win, huh?

Haddock: You better.

Brown: I better hope you win, huh?

Haddock: Right.

Brown: Well, you're gonna lose, Charlie.

Haddock: Well, you better hope I don't.

Brown: Cause you're gonna lose the election fair and square, like . . . .

Haddock: Aw, it'll be fair and square.

Brown: Oh, I know. You see, I know it's gonna be fair and square.

Haddock: But you better hope I don't lose.

Brown: Well, I . . . I tell you what, Charlie . . . uh . . . you got about ten more months, and you'll be gone. Well let's see . . . eleven months. This is still January, I reckon, so . . . .

Haddock: You better hope not.

Brown: Huh?

Haddock: You better . . . .

Brown: Well, are we going to a little swapping on that or not.

Haddock: On what?

Brown: On that . . . uh . . . .

Haddock: Probably so. Let me give you a holler next week.

Brown: Yeah. Okay.

Haddock: I'll see you, ol' buddy.

Brown: Alright, bye.

31. Nichols' intraunion charges against Jack Tucker

On January 20, 1978, Nichols filed intraunion charges, pursuant to the Teamsters International constitution, based on the June 5, 1977, incident with the police car door. These charges were subsequently dismissed by Respondent Local 745's executive board acting on a trial committee.

32. The January 31, 1978, Tucker-Brown conversation

In January 1978, Brown issued a broadside. It was distributed in the usual manner. The broadside made reference to Jack Tucker as follows:

> Jack K. Tucker was fined for assaulting Hall Nichols in Judge Ben Ellis's Court Jan. 18. He was sentenced to one day in jail and a four hundred dollar fine. Hall Nichols is the one that Tucker stopped from attending the June union meeting. Brother Nichols is one of the outstanding members of our local. He ran for election last time. This is the goon tactics that your so called union stewards do to try and scare people . . . Tucker is a union steward . . . Tucker's troubles aren't over with yet. . . . He is going before a union trial and hopefully his union card will be taken. . . .

The leaflet listed Brown as author and concluded, "Phone 391-7320 any time day or night."

On January 31, 1978, Brown received a call. As usual Brown recorded the conversation. The caller identified himself as Tucker. Prior to the call of January 31, 1978, Brown claimed to have heard Tucker's voice only once on June 5, 1977. At that time Brown claimed Tucker yelled only, "You are the [expletive] that started this whole thing." Subsequently Brown was to hear Tucker at a intraunion trial on February 27, 1978. Tucker refused to testify as to any matters at the hearing in reliance on the fifth amendment.[9]

From the background sounds it appeared that Tucker called from a bar. He identified himself as Jack Tucker and began talking about the "flyer." In part he made the following statements.

Tucker: What's that that you are writing down about me?

Brown: Who is this?

Tucker: Jack Tucker.

Brown: Yeah?

Tucker: All right, what are you putting all this [expletive] in that damned little flyer you put out the other day about me?

Brown: Well, it's there. It is a fact, isn't it?

Tucker: No, it ain't a fact [expletive] and you ain't got the [expletive] right either.

* * * * *

Tucker: Hey, I'm going to tell you something. You lie about me again, I'm going to come over and step on your [expletive] head.

Tucker: You put it in your [expletive] pipe and smoke it [expletive] I'm tired of your [expletive]

[9] In the absence of a credited denial by Tucker, it is concluded that the caller was Jack Tucker.

with me. You all better git off my [expletive] case you understand.

Brown: Look, I had a right to put out . . . .

Tucker: Hey, I got a right to whup your [expletive] too.

* * * * *

Brown: Are you threatening me?

Tucker: No, I ain't threatening you, I'm making you a promise.

* * * * *

Tucker: . . . well, if . . . uh . . . you keep . . . uh . . . putting out [expletive] about me, Archie . . . and, I ain't [expletive] with you or nothing else.

* * * * *

Tucker: Ain't you Nichols' mouthpiece? Don't you do all Nichols' thinking? I know he's too [expletive] stupid to think. So you do Nichols' thinking for him.

Brown: No, I don't do his thinking for him.

* * * * *

Brown: I am a Teamster brother trying to help a Teamster—

Tucker: No, you ain't. If you was, you'd [expletive] try to help this Local Union and you're trying to tear it down Archie.

Brown: I'm trying to help this Local—

Tucker: No, you ain't. You ain't doing nothing but trying to cause chaos, you [expletive] and ain't nobody paying no attention to your ignorant [expletive]. . . .

* * * * *

Brown: Well, apparently someone is, you call me on the phone—

Tucker: Hey, yeah, when I read my name in your [expletive] paper, I don't like it.

* * * * *

Brown: Why don't you call the Dallas Morning News—

Tucker: Hey [expletive] you! Now just don't write about me no more [expletive]—

* * * * *

Tucker: I ain't assaulted a [expletive] nobody—

Brown: Didn't you—

Tucker: Hey? Cause same ignorant [expletive] slammed a door on his [expletive] leg, while I was standing there don't make me guilty [expletive] And you oughta know that.

Brown: I seen you do it.

Tucker: You ain't seen a [expletive]—

* * * * *

Brown: You say that you are going to whip me, right?

Tucker: No, I didn't say I would. I said I'd make you a promise if you don't quit [expletive] with me, then you are going to have the right to try to whip my [expletive].

Brown: Mr. Tucker, I'm not messing with you, all I'm doing is—

Tucker: Oh, yeah, you're messing with me! You mentioned my [expletive] name and everything else . . . spread it all over town went out there to Lee Way telling what all you are going to do with me, and I got witnesses to that [expletive].

Brown: All I'm going to do to you—

Tucker: And I ain't threatening you [expletive] but I will tell you what, you're going to have a chance to whip my [expletive].

* * * * *

Tucker: When you put my name down, and start that [expletive] . . . you are threatening me, and I am going to give you a chance to whip my [expletive]. . . Yeah, that's threatening me. You know, I ain't threatening you. I love your [expletive] . . . .

* * * * *

Tucker: Well, now [expletive] you write my name down and you say I scared people, and steward's are . . . you don't need people like me, and all this, they're goons and all this [expletive], in other words, I figure that you are challenging me . . . . You are threatening my damn livelihood—

Brown: I'm . . . well, let me—

Tucker: . . . with lies and trying to take my [expletive] job steward's job away from me, now, you're trying to take my Union card. You are trying to make kids go hungry. Strip me of all my dignity. That ain't threatening me?

* * * * *

Brown: Well, I tell you what. Then you should file charges on me at the Union Hall . . . . If I've threatened you, you can go do that—

Tucker: Well, I don't like to pull these . . . you know, uh . . . all that [expletive]—

Brown: No, I mean that. Go before your union brothers—

Tucker: Us taxpayers pay a lot of money to those old codgers and all that [expletive]. I don't need them.

Brown: Look at this. Go before your Union brothers and file charges. Say . . . why don't you take—

Tucker: It's personal now. But, when you start threatening me, that's a personal thing. I don't let

the Union or nobody else enter into my personal life.

Brown: You don't?

Tucker: No, that's my personal life. The Union don't have nothing to do with my personal life. Nobody does but me.

* * * * *

Brown: Now, I have . . . I have never threatened you, I have no intention to, and I tell you what. I am going to the Union meeting on the 5th, and I'm going to the Union hall anytime I want—

Tucker: Well, I never said you couldn't, buddy.

Brown: And—

Tucker: I want you to come anytime, heck, come on out here anytime.

Brown: And I'll tell you something or another—

Tucker: Yeah, go to the Union hall, to to church, it don't make me a [expletive] . . . . Don't go around town threatening me, you know?

The conversation continued in much the same manner for a total of over an hour.

33. The February 5, 1978, incident

The regular general membership meeting of Respondent Local 745 was held February 5, 1978. At the meeting the question of enforcement of article 18, section 5, of the Teamsters International constitution was raised. Article 18, section 5, states:

> When a member becomes unemployed in the jurisdiction of the Local Union, he shall be issued an honorable withdrawal card upon his request. If no request is made, such honorable withdrawal may not be issued before the passage of two (2) complete months after the month in which the member first becomes unemployed. An honorable withdrawal card must be issued no later than six (6) months after the month in which the member first becomes unemployed, if he is still unemployed at that time.

Member Glen Holmes moved to enforce the section. Both Weed and Brown spoke against the motion. The motion carried "by an overwhelming majority with only 3 dissenting votes."

It was customary at the end of meetings for employees of individual employers to meet with their business agent to discuss local issues. After that meeting the line drivers of Transcon Lines arranged a meeting with their assistant business agent, T. C. Stone. Brown, a former line driver for Transcon, asked Stone if he could attend. Stone replied, "Hell no, Brown you aren't getting in my [expletive] meeting."

Shortly after that Larry Robinson, an city driver, employed as assistant alternate steward at Southwestern Transportation, walked up to where Brown, Weed, and Nichols were standing in the meeting hall. Robinson extended his hand and offered to shake hands with Brown. Brown "realized who he was . . . and told him [he] didn't want to shake [Robinson's] hand."

Robinson, thereupon, told Brown what he thought of him, "and called him a foul name." It is not credited that Robinson attempted to strike, and "drawed back his fist in a manner to strike Mr. Brown." Weed's testimony to that is not credited. Brown did not see any such gesture; Nichols was not interrogated about the incident by the General Counsel. It is inferred that his testimony would not support the General Counsel's position. To the contrary, Robinson, an apparently credible witness, who readily admitted that he took offense when Brown refused to shake his hand and "told him what he thought of him," denied any threatening gesture or statement.

Following the confrontation Brown called to where Haddock, Johnson, and Rogers were still standing, and asked for assistance. Specifically, Brown yelled to Haddock to call off his "goons." Rogers immediately responded and told the members to "leave them alone." He also directed Monk, an assistant business agent to assist Weed, Nichols, and Brown to leave the meeting hall. Monk did as he was directed. There is no evidence that Haddock, Johnson, Roger, or Monk was aware of the confrontation between Brown and Robinson before Brown's call for assistance.

34. The February 21, 1978, Yellow Freight incident

On February 21, 1978, Brown and Weed went to the Yellow Freight terminal in Dallas, Texas. Yellow Freight employees are represented by Respondent Local 745 under the master agreement. Their purpose in going to the terminal was to distribute leaflets to the employees. The leaflets dealt with intraunion matters of Respondent Local 745.

B. Baker, an employee and steward at Yellow Freight, approached Brown and asked what "he was putting out . . . ." Baker reached for a copy with his left hand. He put his hand on the leaflets, and at or about that moment some unidentified person standing to the right rear of Baker struck Brown on the left side of his face. Brown was stunned and fell to the floor. Baker was left holding the leaflets. Baker then went to Weed, who was trying to open an exit door, and told him "that he'd better get his friend up and get out." Brown and Weed then left the premises.

35. The April 3, 1978, union hall conference

On April 3, 1978, Brown and Weed went to the union hall for the purpose of examining the minutes of the general membership meetings. They met with Haddock, Rogers, Prda, and Moore of Respondent Local 745, Mary Jane Cox, a clerical employee of the Union, and Roseburough and Curlee, attorneys for the Union.

The meeting began with a confrontation over whether Brown could record the meeting and a tug-of-war between Brown and Haddock over the tape recorder. Brown retained possession of the tape recorder and agreed not to record the meeting.[10] The conference then proceeded for about 3 hours.

[10] The tape of the forepart of the conference was not received in evidence. It was not probative of the relevant facts on the alleged violation.

During the conference Brown initiated a colloquy with Haddock by telling him that the FBI or FBI agent Grimmer had given him some information that the FBI had received. According to the FBI information, Brown related there had been threats on his life. Haddock responded to Brown's report, "I hope nothing happens to you between now and the time of the election, because if it did, I'd be the first guy they'd look to, they'd come after."[11]

The meeting continued without further significant statement or incidents. At the completion of the examination of the books both Weed and Brown left the union hall.

36. The intraunion charges against Brown and Weed

On February 10, 1978, Bill Baker and nine other members of Respondent Local 745 filed intraunion charges against Brown and Weed. The charges were pursuant to the constitution of the Teamsters International. Thereafter, on February 13, 1978, Carl Branch and five others, and Larry Robinson, separately, also filed charges. Subsequently, on February 29, 1978, Paul Castro, Robert Baker, Warren King, and others filed charges. B. Baker, Branch, Castro, R. Baker, and King are stewards at various employers which have collective-bargaining agreements with Respondent Local 745.

Summaries of the charges were as follows:

B. Baker et al. v. *Brown*:

1. Distribution of literature at workplaces which made untrue statements about officers and members including stating that R. Baker caused Weed to lose his job.

2. At the February 5, 1978, meeting, calling officers of the Teamsters International and Respondent local 745 "Liars and crooks."

3. Distributing literature in work areas "and tried to cause a person working to stop what he was doing and possibly jeopardize his job"; telling an "employee he was going to read his material whether he wanted to or not"; "trying to instigate trouble"; and going to a company where a driver was loading "to instigate [sic] this man with his literature."

B. Baker et al. v. *Weed*:

1. Going to workplaces to pass out literature against the officers and members.

2. In May 1977, Weed "pulled a shotgun on several members of" Respondent Local 745.

3. At the February 5, 1978, meeting threatening to sue Respondent Local 745.

4. On one occasion going to the Yellow Transit terminal "stopping people from their assigned duties and telling them to read what he had to give them."

Branch et al. v. *Brown*:

The charges were substantially the same as the charges in *B. Baker et al.* v. *Brown*.

Branch et al. v. *Weed*:

1. Distributing literature with Brown "containing false . . . and slanderous statements."

2. Picketing Respondent East Texas in violation of the contract and with signs which were "false and malicious."

3. On May 1, 1977, threatening to kill several members with a shotgun.

4. Threatening to sue Respondent Local 745 and accusing the Local of blackballing him.

5. Picketing Respondent East Texas "to disrupt the operation of the Company in violation of the contract and [to] interfere with the performance or obligations of other members causing the Company to threaten to sue the Local . . . ."

Robinson v. *Brown*:

Primarily the charges are substantially the same as in *B. Baker et al.* v. *Brown*, and additionally—

4. "Disrupt[ing] our regular meetings by interfering with officers trying to conduct meetings."

5. "Attempting to disrupt our drivers at Southwestern Trans. on 2/1/78, by attempting to stop trucks to pass out literature" while the trucks were "trying to leave or come in the terminal."

Robinson v. *Weed*:

1. Helped Brown "distribute literature which was very abusive to officers and members."

2. Drove around town with a sign which stated "he might have been fired because he ran for Secretary & Treasurer of Local 745."

3. Threatened to sue Respondent Local 745 if it issued him a withdrawal card.

4. Stated that officers of Respondent Local 745 had blackballed him.

5. Same as No. 3 of *Branch et al.* v. *Weed*.

6. Filing intraunion charges against R. Baker accusing R. Baker of causing his discharge.

7. Same as No. 5 in *Robinson* v. *Brown*.

Since the charges in *Castro et al.* v. *Brown, Castro et al.* v. *Weed, R. Baker et al.* v. *Brown, and R. Baker et al.* v. *Weed* were not heard by union trial, the substance of the charges is not detailed here. Their charges are generally the same as the charges set out herein.

On February 27, 1978, the executive board of Respondent Local 745 heard the charges against Brown. At the opening of the hearing, Brown walked out after stating that he refused to stay in "Nazi atmosphere" and that he would "meet [them] in Federal Court." The executive board proceeded to hear the case and voted to expel Brown. The stated reasons for expulsion were as follows:

> So that there is no confusion regarding the reason for Mr. Brown's expulsion from the Local Union, the entire Executive Board of the Local Union concurs that the only reasons for his expulsion are the following: (a) on numerous occasion he interfered with Local union members and employees performing work for employers under contract with this Local Union and thereby seriously jeopardized the employment of those persons and did engage in conduct that interfered with this Local Union's performance of its contractual obligations; (b) numerous incidents of threats of bodily injury against members of this Local Union without provocation; and (c) conduct that continually inter-

[11] I credit Mr. Roseburough's account of the incident which corroborates Haddock in all material respects.

fered with and disrupted the meetings of this Local Union. The disruption was caused not by what was said by Brother Brown but by the manner in which he conducted himself during those meetings. Each of these constitutes a violation of the International Constitution, Article XIX, Section 1, 6 and 8.

The Local Union Executive Board considered only the record evidence contained in the transcript [item #3 above]. The charges alleging that Brown made slanderous, libelous or malicious remarks about fellow members were found by the Local Union Executive Board to be protected conduct and were not considered and were in no way the basis for Local Union Executive Board decision.

Also on February 28, 1978, the executive board of Respondent Local 745 heard the charges against Weed. The executive board voted to expel Weed. The stated reasons for expulsion are as follows:

So that there can be no confusion about the reasons for Mr. Weed's expulsion from the Local Union, the entire Executive Board concurs that they are as follows: (a) Mr. Weed established a picket line at East Texas Motor Freight, an employer under contract with this Local Union, and did thereby engage in conduct that interfered with members' employment and this Local Union's performance of its contractual obligations; (b) on more than one occasion Mr. Weed, at the place of business of Southwestern Transportation an employer under contract with this Local Union, interfered with the ingress and egress of company owned vehicles by blocking the Company driveway and did thereby interfere with employees and members performing their work for Southwestern and did thereby engage in conduct that interfered with this Local Union's performance of its contractual obligations; (c) Mr. Weed on or near the premises of this Local Union threatened fellow members with serious bodily injury by assaulting and threatening them with a shotgun. Each of these constitutes a violation of the International Constitution, Article XIX, Sections 1, 6 and 8.

The Local Union Executive Board considered only the record evidence contained in a transcript. The charges alleging that Weed made slanderous, libelous or malicious remarks about fellow members were found by the Local Union Executive Board to be protected conduct and were not considered and were in no way the basis for Local Union Executive Board decision.

The expulsions were upheld by Teamsters Joint Council 80. By separate appeals dated March 9, 1978, Weed and Brown appealed their expulsions to the Teamsters International pursuant to the International constitution. On March 16, 1978, Frank E. Fitzsimmons, general president, stayed the effectiveness of the expulsions pending review of Respondent Local 745's action.

Eventually on July 18, 1978, Ray Schoessling, general secretary-treasurer of the Teamsters, informed Brown and Weed in separate letters of the decisions of the general executive board in their cases. In Brown's case they voted to uphold the decision "on the interference and threats charges, and to dismiss the remaining charges." The executive board reduced Brown's expulsion to a suspension for 6 months. In Weed's case they voted to uphold the decision "as the picketing charge and the shotgun incident, and to dismiss all other charges." The executive board reduced Weed's expulsion to a suspension for 3 years.

D. *The Johnie Fink charge*

The Johnie Fink situation is set out separately and out of the general context of the overall case. In the scheme of this case the Fink charge is a sport situation.

Fink had been employed by Respondent East Texas for over 25 years. He was working as a city driver in 1976 when he had a serious heart attack. Thereafter, he underwent open heart surgery. Following his recuperation he attempted to gain reinstatement with Respondent East Texas in the summer of 1976. His own doctor certified him for return to work.

Respondent East Texas had an established policy of requiring all city employees to medically qualify on a Department of Transportation physical examination. Fink was examined by the Company's doctor and failed because of his heart condition.

In such a situation the National Motor Freight, article 47, provides for medical arbitration. This was followed by Fink. The opinion of the third doctor, or doctor-arbitrator, was not dispositive of the issue of Fink's medical qualification to drive.

In September 1976, Fink, with the assistance of the steward, Bobby Green, filed a grievance. The grievance was scheduled to be heard by the Southern Multi-State Grievance Committee in October 1976.

Garland Moore, assistant business agent for Respondent Local 745, was assigned to present the grievance for Fink. Both were in Biloxi, Mississippi, for the grievance hearing. Prior to the actual hearing Moore met with Kenneth Matthews, director of labor relations for Respondent East Texas. A settlement was discussed which was presented by Moore to Fink for his acceptance or objection. Moore reported the discussion as follows:

I went to Mr. Fink and I told Mr. Fink that what Mr. Matthews had posed and I told him, "you'll have to make the decision." You've got a grievance down here. If you want it heard, we'll hear it, if you want to go back and go to work under the same conditions that the other four people is working under in Dallas, Mr. Matthews will allow you to do that.

He said he wanted a few minutes to study about it and he took 10 or 15 minutes and come back over . . . where Mr. Matthews and I . . . [were]. He wanted Mr. Matthews to tell him what he'd told me and Mr. Matthews did.

Fink asked him at the time, he says, "Well, when can I go back to work." He says, "As soon as you can get back to Dallas." Mr. Fink asked him, said, "Well, what about my money I've lost?" Matthews

told him, he says, "There's no monetary claim involved. I will not pay a monetary claim. Now, if you're looking for money, we'll hear the grievance. . . ."

Fink accepted the settlement and returned to work on the dock in October 1976. This represented a change in classification from city driver to city dockman. About 2 weeks after he returned to work, Fink filed a second grievance seeking payment for the time he lost between his offer to return to work and his reinstatement. Obviously the grievance had implications of a breach of the agreement disposing of the first grievance.

Preparatory to formal presentation of the second grievance Moore met with Fink and Green. Moore broached the subject of the prior agreement by telling them that Matthews had not agreed to pay any monetary claim. Fink claimed to the contrary, that later after Moore had left, Matthews had agreed to payment.

Apparently satisfied by Fink's word that the grievance was not a repudiation of the settlement, Moore proceeded with the second grievance. Shortly thereafter, Moore, Fink, and Green met with Lane and Matthews. Moore presented Fink's claim; Matthews however, denied that there was a subsequent agreement between him and Fink that Respondent East Texas would pay a monetary claim. Confronted with the truth, Fink then withdrew the second grievance. Never to be subdued, Fink made a further request when the meeting was breaking up. He asked Matthews whether "after this thing cools off and blows over in a couple of months" could he become a city driver again. Matthews told him that Fink would have to take that up with his terminal manager, Lane.

Fink continued to work as a city dockman without incident until December 1977. Consistent with the usual practice for city dockman, Fink was occasionally given driving assignments. There is no doubt that Fink continued to harbor the desire to be reinstated as a city driver.

On December 27, 1977, Fink received his annual physical examination by Dr. C. E. Cook, the company doctor. At the time of the physical, Fink was told that his electrocardiogram (EKG) had not been read. Despite this, the doctor issued Fink a medical examiner's certificate in accordance with the U.S. Department of Transportation, Motor Carrier Regulation, 49 C.F.R. § 391.41-391.49 (commonly known as an ICC card). Fink told Lane of the issuance of the ICC card. Subsequently, Fink was told that his EKG had been read by the doctor, and that the results were a rejection because of an abnormal EKG.

On or about January 6, 1978, Fink and Norman Roberts, assistant steward, met with Lane. The purpose of the meeting was to discuss Fink's situation and the possibility of the third grievance. Fink indicated a desire to return to city driving. Lane appears to have regarded the situation as a second attempt to renege on the 1977 settlement. Lane referred to Fink's agreement to accept reinstatement in a nondriver classification. During the conversation, Lane told Fink with reference to his present disqualification by Dr. Cook "that he was aware of some men on the dock that could not pass an ICC physical" and if Fink proceed with the matter or filed a grievance for reinstatement as a city driver "that he would send these men and Johnie back to the Company doctor to be turned down."[12] At Fink's request a second EKG was arranged for Fink. Fink told Moore of the arrangement; Moore agreed that the Company could send him back for another EKG. Fink had the second EKG on January 13, 1978; again the results indicated an abnormal condition.

Fink continued to want to qualify for a driver's position. He took the EKG test results to his own doctor, Dr. Schwade, who apparently qualified Fink on the EKG as normal. Fink then took the position to the Company that Dr. Schwade's examination of the EKG should be the contractual third doctor or doctor-arbitrator. Respondent East Texas refused to agree.

There followed a period of several weeks where Fink was undecided on the question of whether to file a grievance under article 47, seeking qualification as a driver. Lane sought a decision from Fink. For that purpose there was a meeting between Fink, Moore, and King, steward, with Lane. Lane explained the history of the original grievance and settlement. He also took the position that Respondent East Texas had reinstated him under the agreement and has lived up to the agreement by working him regularly on the dock. Moore explained Fink's recourse under article 47 to him. In his explanation Moore told Fink that if he chose to grieve "he could lose some time at work." After a private conversation with Moore and King, Fink was still undecided. He promised to give Lane an answer by the following Monday.

Instead of giving Lane the answer, Fink filed charges with the Board on March 27, 1978, in Case 16-CA-7825. No third grievance was ever filed.

IV. ANALYSIS

A. *The Procedural Issues*

As discussed above the General Counsel offered from Weed an abridged version of the May 1, 1977, incident. Because of this, his testimony on the scuffle (round one) was rejected as evidence. Respondents moved to strike all of Weed's testimony because of his refusal to respond to clearly material questions. Weed's refusal, of course, was based on his constitutional right against self-incrimination. There were substantial questions of waiver raised, both by his testimony and statements to the Board as well as by his prior testimony and statements in other tribunals and to other Federal and state agencies.

The only means to determine the question of waiver would be for the General Counsel to proceed under Section 11(b) to require Weed to answer material questions. The U.S. district court, the appropriate forum, would then determine the waiver issue. This, however, the General Counsel chooses not to do. Yet, the General

[12] Assistant Steward Norman Robert's version is credited. Fink's testimony was confused and contradictory on many facts and the sequence of events. It is concluded that much of his testimony was based on good faith but erroneous recollections. Lane did not directly address the Fink-Roberts conversation.

Counsel seeks to rely on the segmentary version offered by Weed.

The General Counsel and the Charging Party are not preferred litigants before the Board. *Peyton Packing Company, Inc.*, 129 NLRB 1358, 1360 (1961). They are under the same obligation to produce relevant evidence where appropriate. Respondents, as well as the General Counsel in a comparable situation, analogized the issue to the refusal to make discovery under the Federal Rules of Civil Procedure Rule 37(b). Despite the varied positions taken by the parties at different stages of the proceeding, the Federal Rules of Civil Procedure, which are applicable in the U.S. district courts, are not controlling in administrative hearings before the Board. *The Raser Tanning Company* v. *N.L.R.B.*, 276 F.2d 80, 83 (6th Cir. 1960).

Nevertheless, the Board has adapted comparable sanctions in contumacy situations. In *Tropicana Products*, 122 NLRB 121, 122–123 (1958), the Board took the facts regarding jurisdiction, which the employer refused to produce, to be established; a sanction available under F.R.C.P. Sections 37(b)(2)(A). Also in *Bannon Mills, Inc.*, 146 NLRB 611, 613 (1964), the Board refused to allow a respondent who would not produce documents to subsequently offer the documents to refute secondary evidence which was received, a sanction available under F.R.C.P. Sections 37(b)(2)(A).

There appears to be no Board authority, or an analogue under the F.R.C.P., to authorize me to strike all of Weed's testimony in the case. Accordingly, Respondents' motions to strike all of Weed's testimony is denied. Under the authority of the Board's Rule and Section 102.44 and *Bannon Mills, supra*, the General Counsel's and Weed's motions, to rehabilitate Weed as a witness and to consider his testimony about the May 1 incident, are also denied.

Respondent Local 745 also sought to strike all of Charging Party Brown's testimony because of his failure to comply with the Jencks Act as adopted by the Board. The evidence Respondent Local 745 sought was the collection of tape recordings made by Brown. These were of telephone and other conversations where, at least in most of which, Brown was a participant. The conversations were with other parties or witnesses in these cases. The recordings in question were among those submitted by Brown to the Federal Election Commission and other Federal and state agencies. The submissions were in connection with investigations of Respondent Local 745 and some of its principals. Additionally, there were apparently other recordings which had not previously been disclosed.

Brown stated that he was technically qualified, experienced, and equipped to engage in electronic surveillance, including clandestine wireless bugging. Further, he stated he customarily made recordings of all telephone conversations and selected other conversations, without the knowledge of the other party. This included, at least on one occasion, a Board agent. Also, Brown stated he maintained some information, thus developed, secret from the General Counsel. It is clear that the General Counsel did not suggest, assist, or participate in any electronic surveillance by Brown, nor was the General Counsel privy to any such activities prior to Brown's surveillance conduct. The General Counsel was only aware of those tapes which Brown chose to submit.

In consideration of the issue it should be noted that because of the unusual circumstances of the case, involving a multitude of proceedings before several courts and agencies, the General Counsel conceded the applicability of *Harvey Aluminum, Inc.* v. *N.L.R.B.*, 335 F.2d 749, 752–756 (9th Cir. 1964). This is appropriate here because the General Counsel's theory applies the full panoply of Federal labor law in the substantive issues. Upon being required to produce the tapes, Brown produced a small number of recordings of irrelevant conversations. Respondent Local 745 argued that, in view of Brown's admissions, there was obvious contumacy.

Despite the broad reach of *Harvey* and the extensive bugging, activity of Brown, all tapes apparently within the knowledge of the General Counsel were produced. Respondent Local 745 had sufficient opportunity to cross-examine Brown, and no further cross-examination would have been appropriate. For these reasons the motion to strike Brown's testimony is denied.

Both Respondents filed motions to sever the complaints against them and for separate hearings. These motions were periodically renewed throughout the proceedings despite consistent denials. No prejudice has been shown to either Respondent despite the length of the hearing because of consolidation of the cases. Despite these claims, it is concluded that was sufficient connection between the cases to justify consolidation.

Respondent Local 745 moved to intervene in the litigation of the grievance-arbitration cases pursuant to *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955). The motion was grounded in *Vaca* v. *Sipe*, 386 U.S. 171 (1967), in its requirement that unions fully and fairly represent their members. The motion to intervene was denied prior to the hearing and was reviewed during the hearing. Under the circumstances where, as here, the *Spielberg* issue was litigated in a consolidated 8(a)(1), (3), and 8(b)(1)(A) case, the Union Respondent in the 8(b)(1)(A) case has been allowed a broad-ranging cross-examination of the Charging Party, and a reasonable opportunity to show fair treatment of the Charging Party; in all its relationships with him, Respondent Local 745 has had substantially all the due process rights to be obtained by intervention.

Accordingly, it is concluded that Respondent Local 745 has not been prejudiced by the denial of intervention in the case against the employer.

B. *The Agents of Respondent Local 745*

The General Counsel took the position that the officers, business agents, assistant business agents, stewards, and assistant or alternate stewards are all agents of Respondent Local 745 within the meaning of Section 2(13) of the Act. Respondent Local 745 contested the general assessment of agency status and argued that agency status under Board authority must be shown as to the

particular acts of the alleged agent. Some authority for Respondent Local 745's argument does exist.[13]

Initially it must be considered that the local union is a subordinate entity. The complex system of the Teamsters International, conferences, joint councils, and locals, grants to locals only qualified authority under the Teamsters International constitution. The acts of the Local are subject to reversal on an appropriate appeal to the joint council, the conference, and the Teamsters International. In the case of a clear violation of the Act by the Local, where on appeal the International reverses the local decision and no one has been adversely affected, the Board may decline to find a violation. *Local 100, Transport Workers Union (Liberty Coaches, Inc.)*, 230 NLRB 536 (1977).

Within the limitations of this system, determination of agency status of officers and employees depends upon: (1) the position held by the alleged agent; (2) the actual scope of general authority granted; and (3) the perceived authority and established practice of the alleged agent in the general area of the questioned acts. *International Association of Machinists; Tool and Die Makers Lodge No. 35, etc. [Serrick Corporation]* v. *N.L.R.B.*, 311 U.S. 72, 73–75 (1940). Since the potential factual variations are limitless, general applications of Board findings in particular cases are inappropriate. Under the principles of the cited cases determinations of agency status must be on a case-by-case basis.

In the present case Haddock was the secretary-treasurer and business manager of Respondent Local 745, the chief executive officer of the Local. He was the ultimate local authority on all matters within the general authority of the Local, and was perceived as having that authority in the area of all of his acts. Under such circumstances, having shown the status and authority, the burden would be on Respondent Local 745 to show that the acts were solely for his private interests.

To a lesser degree, the same standard applies to the other officer-business agents who are members of the executive board. Together with the secretary-treasurer and business manager they form the management of the Local. While the title of their position may indicate a specific area of authority and the Local's bylaws may establish a limited scope of general authority, they jointly have general responsibility to manage the Local. By the established standards, they jointly, for overall purposes, and individually within that actual scope of their general authority and the perception of their authority in the area of their acts, bind the Local. Of course, their individual acts would still be subject to review and repudiation by the secretary-treasurer and the executive board.

Assistant business agents are not officers of the local, but paid employees. Their position and authority are not determined by the constitution and bylaws, but by management in the employment arrangement. Generally, their main responsibility appears to be the administration of the contract. Each assistant business agent is assigned to an individual employer or group of employers. Assistant business agents have the primary responsibility to process grievances with the assistant of the steward to the extent determined necessary by the assistant business agent. Additionally, as assigned by Haddock, stewards perform other general services for the Local. Within this scope, their acts are perceived by the members and others as the acts of the Local with the limitation that their acts are subject to review by Haddock. The mere availability of review does not detract from the broad actual and perceived scope of general authority in the overall area of the Local's operations. Thus, agency status of the assistant business agent is presumed in most situations in this case.

The lowest order of alleged agents of Respondent Local 745 are the stewards and their assistants and alternates. They are neither officers nor paid employees of the Union. What payment they may receive is pursuant to a special agency arrangement in organizational activities or grievance arbitrations. To substantially the same extent, comparable arrangements may be made with any other member. Stewards are elected by the members employed at a single terminal. They serve at the pleasure of their fellow employees; they receive no payment from these employees because of their steward status. Assistants and alternates are yet one more step removed from the Local and the member-employees since they serve at the pleasure of the steward. They all are full-time employees of the employer and are paid at the same rate of other employees in the same classification. Their authority is not established by the International constitution or the local bylaws, but is a creature of the collective-bargaining agreement. As noted in *Teamsters Local 745 (Transcon Lines), supra*, there are no contractual distinctions between the authority of the steward and his assistant or alternate. This, however, could be subject to limitations established by the steward in designation of assistants and alternates. *Teamsters Local 745 (Transcon Lines) supra*, followed the principles of *Teamsters Local 886 (Lee Way Motor Freight, Inc.)*, 229 NLRB 832 (1977), which involved the same collective-bargaining agreement. Both cases limited the assignment of agency responsibility to actual scope of general authority granted and the perceived authority in the same. In *Lee Way* the threat was related to presentation of grievances; in *Transcon* it was related to solicitation of membership. Under the circumstances agency generally must be limited to the contractual assignment of authority: (1) investigation and presentation of grievances, and (2) transmission of messages and information. As to the former, the evidence further limits the actual assignment of authority because of the lead position taken in most grievances by the assistant business agent assigned. Since none of the alleged violations in this case are clearly within the actual or perceived scope of authority under the con-

[13] In *Barton Brands, Ltd.* v. *N.L.R.B.*, 529 F.2d 793, 797 (7th Cir. 1976), the court denied attribution to the local of acts of an officer where the acts were undertaken in his own behalf as a candidate for office. The decision rejecting the Board's theory of a violation does not appear to have been adopted by the Board. The court cited *International Ladies' Garment Workers Union, AFL–CIO [B.V.D. Company, Inc.]* v. *N.L.R.B.*, 237 F.2d 545, 551 (D.C. Cir. 1956), and *International Longshoremen's and Warehousemen's Union, C.I.O.; Local 6, etc. (Sunset Line and Twine Company)*, 79 NLRB 1487 (1948), which followed the established standard that agency status was determined by whether acts were "within the scope of his general authority as an officer."

tract, each incident must be evaluated to determine whether agency responsibility can reasonably be assessed.

C. *The Allegations Against Respondent Local 745*

The chronology of this case has a thread of threats, intimidation, and violence. This is reflected in the intraunion politics as well as in the workplace relationships. Respondent Local 745 argues that in the situation where violence is an endemic of the industrial environment of the case and the lives of employees, comparable conduct in the intraunion politics loses substantive significance. In appropriate circumstances the Board must recognize the industrial reality of violence. This does not mean the Board can ignore or slough off threats, intimidation, and violence because these exist in the industrial climate. The law must end the rule of violence, or violence will destroy the value of law. Rather, the explicit violence of the culture must be considered as an industrial reality, in the weighing of the impact of threats, intimidation, and violence in the context of purported violations of the Act. Such was the case in *General Truck Drivers Warehousemen & Helpers of America, Local Union No. 5 (Union Tank Car Company)*, 172 NLRB 137 (1968).

The General Counsel relies heavily on the background of Weed's and Nichols' union activity as establishing the Union's animus toward them. Nichols' union membership dates from 1952 and Weed's from 1967. Nichols ran for trustee in 1969; he lost. Weed was one of several candidates for steward in 1975. He lost badly; R. Baker was elected. Weed and Nichols ran for union election in December 1975. They lost badly to the incumbents. They protested the election to Teamsters International, the U.S. Department of Labor, and the U.S. district court. All appeals were rejected because of lack of merit. Other members of Respondent Local 745 had run for election against incumbents during the period. There was no evidence of discrimination against them. During the period from November 1976 to the present, Weed and Nichols became identified with Brown and his activities.

On April 3, 1977, B. Baker, steward at Yellow Freight Systems, confronted Weed, Brookins, and Ross after the regular monthly meeting of Respondent Local 745. The General Counsel argued that B. Baker threatened to whip Weed because of his February 7 letter to President Carter. Further, the General Counsel argued that the threat was made in the presence of Assistant Business Agents Moore and Stane. Although B. Baker did not work with Weed, Brookins, or Ross and had no steward responsibility to them, he was engaged in activity related to his steward authority. He was attempting to investigate the circumstances of what had been alleged in the letter as an employee grievance.

Thus, there is a strained connection between B. Baker's confrontation and inquiry of Weed and his agency status. There is no doubt that he was angry about Weed's arrogation of authority, and his accusations of misconduct on the part of the stewards at Yellow Freight. Nevertheless, I have credited B. Baker's denial of any threat to harm Weed. Further, I have credited Moore's denial that he heard a threat. Thus, it is concluded that, assuming agency status of B. Baker, there were no threats by agents of Respondent Local 745 to assault Weed, Braskins, or Ross on April 3, 1977, and that there could have been no occasion for the Union to repudiate such threats.

On May 1, 1977, there was an altercation on the union hall parking lot. Although the circumstances of its origin are somewhat confused, it is apparent that Weed and Nichols did not win the first round. When Weed came back for round two with his shotgun, everybody "scattered like quail" so he may have been the apparent victor. There was, however, no evidence that Respondent Local 745 or any of its agents participated in, conspired, instigated, or incited any attack on Weed and Nichols. Rather, this must be concluded to have been a spontaneous incident. Responsibility for violence, if it is to be assessed against Respondent Local 745, must be based on the presence of Assistant Business Agent Moore and several stewards, and their failure to stop the violence and to assist Weed and Nichols.

Yet, there is no evidentiary basis to conclude that any agent knew who was committing the assault and who was being assaulted. From the apparent distances between the fighters and any alleged agents of Respondent Local 745, and the very brief period of round one, no responsibility can fairly be charged to Moore for his failure to act. Considering the apparent circumstances, Moore would have a greater responsibility in round two to stop Weed from coming on the parking lot with a shotgun at the ready. Realistically, though, he cannot be charged with responsibility of using judgment of self-preservation and failing to confront Weed at that time. Also, it cannot be concluded that any stewards were within the scope or area of their responsibility at the hall. Finally, it cannot be concluded that stewards have general police responsibility on union premises.

Any responsibility Respondent Local has in the May 1 incident, where direct evidence of participation or ratification is insufficient, derives from responsibilities inherent under the Act and the "overriding policy of labor laws." *Scofield* v. *N.L.R.B.*, 394 U.S 423, 429 (1969). This is under the alternate theory of the General Counsel. As the collective-bargaining agent under the Act, Respondent Local 745 has the duty of fair representation of all of the employees in the unit. *Vaca* v. *Sipes*, 386 U.S. 171, 177 (1967), and *Miranda Fuel Company, Inc.*, 140 NLRB 181 (1962). It is without regard to the intraunion conflicts, and regardless of whether motivated by political or personality differences. *Carpenters Union Local No. 22 (Graziano Construction Company)*, 195 NLRB 1, 2 (1972), and *Carpenters District Council of Kansas City (Daniel Construction Company)*, 227 NIRB 72, 81 (1976). Under the general concept of industrial democracy, fair representation includes the duty to guarantee the rights of members to participate "fully and freely in the internal activities of their own union." *Carpenters Local 22, supra*. The Board's responsibility to regulate the Union's conduct appears established without regard to whether the participation relates to the conduct affecting the employees employment relationship to his employer, or affecting the members intraunion relationship

to the Union.[14] *Scofield* v. *N.L.R.B., supra*, and *Carpenters Local Union 22, supra*. Although arguably as stated by Respondent Local 745, the Board in *Carpenters Local 22* and *Carpenters District Council* reads more into "overriding policy of the labor law" than intended by the scope of *Scofield*, the Board law appears clear in this area. Cases to the contrary are distinguishable. While joining a union implies consent to the imposition of discipline for violation of union rules,[15] it does not imply consent to the unwarranted use of force because of political or personality differences with leadership or other members. It follows that the union has a duty to take reasonable steps to guarantee freedom of access to intraunion participation. Freedom of access includes individual safety as well as security of the meeting hall and the immediate area.

This does not mean that the union must, without substantial justification, post armed guards at the four corners of the Union property. Such steps, without good cause, could be determined to be more inhibitory of intraunion participation than uncontrolled verbal abuse and occasional scuffles. Where there is no history of abuse, there is no need for affirmative action. Where, as here, the evidence confirms that members are "truckdrivers, who fight, cuss and argue as they breathe," the Union should reasonably expect such conduct to be carried over into the intraunion activities. Reasonable steps even in a background of confrontations would be progressive depending on the circumstances and seriousness of the confrontation. Where the union might initially be expected to disavow violence, and to encourage or admonish the members to allow free access, subsequent threats, intimidation, or violence, would mandate repudiation and denunciation of the conduct. It would also warrant supervision of the premises for the purpose of prevention of the recurrence of prior conduct. Where the conduct has been sufficiently opprobrious or violent, the union would have a duty to restrain the recalcitrant member by censure, probation, suspension, or expulsion from intraunion activity or membership. To do less would be to tacitly accept the denials of freedom of access, and thus to restrain and coerce employees within the meaning of Section 8(b)(1)(A) of the Act.

In the May 1 situation, Respondent Local 745 was aware of the conduct of Weed and Nichols as minority dissidents. There is, however, no evidence of prior denials of access to the meetings or violence at the meetings. The dissidents' prior arrangement for television, although suspicious, is insufficient to warrant a conclusion that the event was staged. Respondent Local 745 failed to attempt to identify the two who fought with Weed and Nichols, to establish who was the aggressor, and to prevent future violence. Under such circumstances, Weed and Nichols, and all other members who observed the violence, were restrained and coerced in their exercise of the rights within the meaning of Section 8(b)(1)(A). This is not to absolve Weed from his responsibility for his own acts on May 1. He came on the union property, ostensibly to attend a peaceful union meeting, but armed with a concealed dangerous weapon. There was no evidence of previous threats or violence which would justify his arming himself. Nor, if there were, would he be justified in carrying a prohibited weapon. After the altercation, he returned to the union property armed with a shotgun, and assaulted and threatened to kill random members. There no doubt that Weed was in heat of anger but this does not excuse the conduct.

Respondent Local 745, thus, acquired a second duty to remedy and prevent violence. Since a simple assault cannot be equated to the assault with a deadly weapon and a threat to kill, the second round imposed a substantially greater duty than the first. Although untimely, the subsequent suspension was, thus, not inappropriate. Thereafter, Respondent Local 745 had a duty to supervise the union property for the purpose of preventing further instances of violent conduct.

The June 5, 1977, incident, coming immediately after the May 1 violence, becomes more serious than it would be in isolation. Tucker told Nichols that he would not allow Nichols to attend the union meeting. Tucker assaulted Nichols, but not seriously. Bridges then threatened to take care of Nichols at a later date. Again neither Tucker nor Bridges was acting as an agent of the Union for the reasons previously stated. This was a simple situation of assault and threats.

Nevertheless, after May 1 Respondent Local 745 had a greater obligation to guarantee free access. The earlier violence, which was within the knowledge of the management of Respondent Local 745, put the Union on notice of the need to prevent violence. Although direct responsibility for the June 5 incident cannot be assigned to the Union, as discussed above, the seriousness of the overall situation mandated supervision of the union property. This was not done. Because it was not done, the incident was allowed to develop uncontrolled. Further, after the incident Respondent Local 745 took no action to reprimand Tucker and Bridges, or to prevent them from further intimidation of union members. Under such circumstances, Nichols, Weed, Ross, and all other members who observed the incident were restrained and coerced in the exercise of their Section 7 rights within the meaning of Section 8(b)(1)(A) of the Act.

Subsequent to June 5, 1977, there were no further incidents at union meetings in 1977. Weed, Nichols, and other dissident members attended regular monthly meetings as they pleased. This may indicate that the May 1 and June 5 conduct was atypical. It is more likely that the combination of the acts of Respondent Local 745, the pending local criminal actions, the pending unfair labor practice charges, and the informal settlements and notices in Cases 16–CB–1255, 16–CB–1267, and 16–CB–1279, substantially eliminated the situation.

On January 14, 1978, Haddock telephoned Brown. There followed a long rambling conversation. As argued by Respondent Local 745, the realities of their relationship must be considered in evaluating any alleged threats. They were political opponents locked in conflict over the Teamsters International and Respondent Local 745. Further, it must be considered that this was a free-

[14] Of course, beyond the scope of the Act the Board has no statutory expertise and must be guided by interpretations of agencies and tribunals vested with comparable responsibility and expertise under the statutes.

[15] *N.L.R.B.* v. *Boeing Co., et al.*, 412 U.S. 67 (1973).

ranging conversation between two old adversaries. Each was trying for real or imagined coign of vantage through cajolery, trickery, and pressure. They knew what they were about. From my observation of Brown at the hearing, I view him as impervious to intimidation.

Nevertheless, Haddock made a number of references to Brown's well-being in the event of Haddock's defeat in the 1978 election. These were that Brown would not enjoy it, would feel bad, would get despondent, would be remorseful, and would have a nervous breakdown.

I cannot believe that even Haddock really believed that this defeat would cause Brown automatic remorse. Respondent Local 745 argues that Haddock was in effect saying, "If I lose, you'll feel bad because you will not have old Charlie Haddock to kick around anymore." Unfortunately for Respondent Local 745, there is no evidence on which to base such a conclusion. On the contrary, the recurring theme of bad feeling leads to the conclusion that it was a veiled threat of misfortune to Brown if Haddock lost the election. The entire conversation related to the Local Union and Brown's intraunion activities. Respondent Local 745 must be assessed responsibility because of Haddock's position as chief executive officer of the Local. Accordingly, it is concluded that on January 14, 1978, Haddock, as an agent of Respondent Local 745, restrained and coerced Brown in his Section 7 rights within the meaning of Section 8(b)(1)(A) of the Act. The parting reference to, "doing a little swapping," is typical of the overall tenor of the conversation. Such passages are considered insufficient to void the effectiveness of the veiled threat.

The incident of January 31, 1978, between Tucker and Brown was verbally a clear threat. The weight to be given to the colorful language and expressions must be considered on the basis of the common usage in the group. Because of the circumstances, I find it unnecessary to do so in this situation. Tucker is steward at Missouri Pacific Trucking Company. He is not an officer or employee of the Union. He was acting well beyond the scope of his limited agency in talking to Brown, a former employee of Transcon. Although the conversation related to one of Brown's flyers, Tucker's anger was personal. References to Brown's intraunion activity were only incidental to the overall conversation.

Under all the circumstances, it is concluded that Tucker was not acting for the Local and that Respondent Local 745 cannot be held responsible for any threat by Tucker or Brown on January 31.

As I have previously found on the grounds of credibility that Larry Robinson did not threaten or assault Brown and Weed at the union hall on February 5, 1978, there is no basis for a finding of violation. Further, any violation would be based on the allegation of Robinson's agency. Since Brown is an alternate steward and not an officer or employee of Respondent Local 745, the Local's responsibility for any alleged acts would not be established. Finally, in this situation when their attention was directed to the area, Haddock, Rogers, and Monk acted immediately to insure the security of the union hall and the safety of members attending the meeting. Under all the circumstances it is concluded that on February 5, 1978, Robinson, as an agent of Respondent Local 745, did not restrain and coerce Brown and Weed within the meaning of Section 8(b)(1)(A) of the Act.

On February 21, 1978, Brown was assaulted and knocked out at the Yellow Freight breakroom. At the time Brown and Weed were trespassers at Yellow Freight's terminal; they had entered unobserved and without permission. This does not mean they were beyond the protection of their rights, or that it was "open season" on them. They were subject to eviction by management, guards, or any other employee charged with responsibility to maintain the security of the terminal.

I conclude that B. Baker did not instigate or participate in the assault. The assault is concluded to have been a spontaneous reaction of a person opposed to Brown; it appears to have been because of his intraunion activities. I cannot credit that B. Baker is unable to identify who hit Brown.

The question remains whether Respondent Local 745 can be held responsible for an assault by a person who is at most presumed to be an adherent of the Union, and where the assault occurs at an employer's premises outside the control of the union, solely because of the presence of a union steward. Here the steward is at a place where he is acting as a limited agent of the Union. If it could be concluded that B. Baker instigated or participated in the assault, there might be a basis for making the Union responsible. B. Baker appears as surprised as Brown and Weed by the assault. After the assault, he acts immediately to remove the two trespassers from the premises and to prevent further violence. Under the circumstances, it is concluded that Respondent Local 745 cannot be held responsible for the February 21, 1978, assault on Brown.

The April 3, 1978, incident between Haddock, Brown, and Weed was clearly not a violation. On the basis of the credited testimony, Brown reported that the FBI had told him of a threat on his life. Haddock's reaction was self-concern, not a threat; his expressed concern was not irrational under the circumstances. If something happened to Brown, Haddock would certainly be a subject of suspicion because of Brown's intraunion activity and the political competition between them. It is concluded that Haddock did not threaten Brown and Weed on April 3, 1978.

As noted above, the full panoply of labor laws guarantee to employees a substantive degree of industrial democracy. This includes a basic form of due process in cases of union trials. Of course, the legalistic approach to due process of formal courts of law would necessarily be foreign to a standard of due process in unions, which must rely on union members who are not lawyers. In *Local 100, Transport Workers Union (Liberty Coaches, Inc.), supra*, the Board considered a situation where union charges were filed by members including the union's organizer. It would be questionable whether, under the overriding labor policy, the union could peremptorily reject a charge unless it was scurrilous, frivolous, or wholly lacking in color or claim of right. Here Respondent Local 745 received charges and gave the charging and charged parties their day in court. In *Local*

100, the Board dismissed the complaint based on a fragmented approach to the proceeding and looked to the final result after appeals had been exhausted. The approach appears equally applicable here.

The final result of the intraunion trials of Brown and Weed were that they were not expelled. They were both suspended by the general executive board. Brown was suspended for 6 months because of "interference and threats." The *interference* referred to distribution of literature under circumstances where it interfered with employees performing work and, thus, jeopardizing the employees' jobs. The *threats* referred to threats of bodily injury of members. There was evidence offered in support of both findings at the intraunion hearing. The February 28, 1978, findings of the executive board of Respondent Local 745 which was acting as trial board found Brown guilty of the charged misconduct as to both allegations.

Weed was suspended for 3 years because of "the picketing charge and the shotgun incident." The evidence in this record establishes that Weed engaged in both actions alleged before the Union. The February 28, 1978, findings of the executive board found Weed guilty of charged misconduct as to both allegations.

Since it is the final result that is considered under *Local 100*, it is unnecessary to consider any allegations made in union charges, or findings of the executive board not adopted by the Teamsters International general executive board. It is concluded that the findings of the general executive board, as stated, are the grounds for expulsion, and that there is no basis for concluding that the suspensions were to deny Brown and Weed access to Board processes under the Act or for any other reasons violative of overriding labor policy. Because of this conclusion, I find it unnecessary to decide whether the proviso to Section 8(b)(1)(A) would prevent the Board from finding that the act of expulsion or suspension from union membership was violative of Section 8(b)(1)(A). Although, as a general proposition, provisos are usually considered as broad as the proscriptions to which they apply, under the circumstances it is concluded that Respondent Local 745 did not violate Section 8(b)(1)(A) by processing intraunion charges against Brown and Weed, which resulted in their suspension for 6 months and 3 years, respectively, because the findings were based on sufficient cause unrelated to protected activity.

The sole remaining question in the complaint against Respondent Local 745 is whether to set aside the settlement agreements which remedied the May 1 and June 5 incidents, on the basis of postsettlement conduct. The only postsettlement conduct which is found to be violative of the Act is the veiled threat of January 14, 1978, directed to Brown. The conduct was related to the intraunion activity of Brown. There is a sufficient connection between the intraunion activity of Brown, Weed, and Nichols, and between the veiled threats directed to Brown and the failure to provide access to full participation in intraunion activities in the settled cases, to conclude that the threat is similar related conduct. Further, it is difficult to conclude that a threat, even a veiled threat, can ever be isolated. Also, the person making the threat was the chief executive officer of Respondent Local 745. Since it must be concluded that it would effectuate the Act to remedy a single violation of Section 8(b)(1)(A) where the violation involved a threat, it is also appropriate to the effectuation of the Act that a prior informal settlement agreement which attempted to remedy similar violations of Section 8(b)(1)(A) be set aside. There is sufficient nexus between both the conduct and the purpose of the violations to allow no other conclusion.

D. *The Allegation Against Respondent East Texas*

With respect to the complaint against Respondent East Texas based on Weed's charges, the General Counsel's and Weed's theory relies on (1) Weed's history since 1970 of union activities including the filing and processing of grievances; (2) his history since 1972 of animus, harassment, and discrimination by Respondent East Texas because of these activities, Weed's history and identification since 1975 as a minority intraunion activist; (3) his history since 1975 of animus, harassment, and discrimination by Respondent Local 745, because of these intraunion activities; (4) his history since 1975 of animus, harassment, and discrimination by Respondent East Texas because of these intraunion activities. All this background supposedly created a situation of substantial company knowledge, where with the continuation of Weed's union activities, minority intraunion activities, and concerted activities since the beginning of the 10(b) period, October 7, 1976, Respondent East Texas *finally* in early 1977 decided on a course of conduct of consultations and warning letters which was intended to, and did, lead inexorably to his discharge August 10, 1977, because of his continuing activities and for the purpose of ridding Respondent East Texas of a leading union activist.

The law, however, does not support the proposition. The General Counsel's position is ambivalent. He, at once, concedes that Section 10(b) prevents a determination that the pre-10(b) period activities were unfair labor practices. Yet, he seeks a determination that Respondent East Texas' actions against Weed, detailed herein as occurring before October 7, 1976, were motivated by union animus and, therefore, discriminatory. He is in effect saying that he wants finding unfair labor practices, which but for Section 10(b), would be required to be remedied. The finding of illegality outside the 10(b) period even without a remedy would be contrary to well-established law. *Local Lodge No. 1424, International Association of Machinists, AFL-CIO* [*Bryan Manufacturing Company*] v. *N.L.R.B.*, 362 U.S. 411 (1960). To the contrary it must be determined at law that the conduct outside the 10(b) period is not violative of the Act, nor can it be used in the manner suggested by the General Counsel to, at law, establish Respondent Eaxt Texas union animus in this case.

Further, there is the situation created by the unfair labor practice charge filed by Weed against Respondent East Texas in Case 16-CA-6564 on April 30, 1976. The 10(b) period in that case was October 30, 1975, to May 24, 1976. This charge was not withdrawn with the ap-

proval of the Regional Director. It is well established that unfair labor practice allegations during the 10(b) period and the period of pendency of those charges (October 30, 1975, to May 24, 1976) cannot be considered to have been given new life in this case, if the conduct is not within the 10(b) period of a valid charge. Here there was none; thus, conduct before May 24, 1976, cannot be considered as unfair labor practice violations. *N.L.R.B.* v. *Silver Bakery, Inc.*, 351 F.2d 37 (1st. Cir. 1965), denying enforcement 150 NLRB 421 (1963). This conclusion applies whether the finding would be actual unfair labor practices or putative unfair labor practices, as under the General Counsel's theory.

Nevertheless, Weed's employement and union activity history is not without substantial significance in this case. During the period from 1970 until October 1976, Weed was a union member. He was not an officer or steward. He filed grievances almost exclusively in his own behalf because of discipline against him or employer actions which affected him alone. He participated in grievances signed by other employees which affected the group. He was not a union leader or even activist. He appeared to have been much the same as all of the other employees who were members of Respondent Local 745. He did run for office against the incumbent union officers of the Local; others did also. There was no pattern of actions by Respondent Local 745 or the employers against these employees after they ran for office. Significantly, Garland Moore was employed as assistant business agent after he ran against the incumbent and was defeated. The evidence was so convincing on this point that Brown, acting in his own behalf, momentarily repudiated the General Counsel's position of retaliation and argued to the contrary that Respondent Local 745 rewarded those who ran against the incumbents. The background established Weed's recurring problems with his employer, Respondent East Texas, because of his delinquencies and deficiencies. He had problems following rules and accepting supervision. The evidence wholly failed to support Weed's claim of a background of employer discrimination and animus against him, because of his union activity, intraunion activity, and concerted activity. Despite this, he readily justified everything he did while accusing Respondent East Texas of a 6-year course of bias, unfairness, under-handedness, and retaliation. This is rejected. The discipline exacted against him prior to the beginning of the 10(b) period was not discriminatorily motivated, but on the contrary was for cause.

On the basis of my credibility determinations, I have concluded that Jim Sims, terminal operations manager, did not threaten Weed with discharge on March 9, 1977. Since I cannot credit Weed's version of the conversation, there is no basis for a finding of an 8(a)(1) violation based on the alleged threat.

On March 10, 1977, Weed was late to work. This conclusion was based on my credibility resolutions and factual findings. A warning letter was issued on March 11, 1977. There was evidence that other employees were also issued warning letters for being late. Accordingly, it is concluded that Respondent East Texas did not discriminate against Weed in issuing him a warning letter on March 11.

On March 21, 1977, Respondent East Texas issued Weed a warning letter because of a preventable accident. The situation was not free from doubt because of Terminal Operation Manager Sims' participation in the course of events leading to the accident. Nevertheless, it was true that Weed had the contractual right to refuse to operate the equipment. Later after the accident, he exercised that right. Upon accepting the assignment, Weed was assessed responsibility and was assumed to have concluded that the equipment could be operated safely.

On the basis of his record, it cannot be concluded that Weed was inhibited or intimidated by Sims' directive. It must be concluded that Weed must bear at least some responsibility for the resulting accident. There is evidence that other employees who had preventable accidents were also given warnings. Accordingly, it is concluded that Respondent East Texas did not discriminate against Weed in issuing him a warning letter on March 21.

On March 22, 1977, Respondent East Texas issued Weed a warning letter because he was 54 minutes late. He was late because of "human error." This was his second late to work episode in March 1977. Accordingly, I conclude that Respondent East Texas did not discriminate against Weed in issuing him a warning letter on March 22.

On March 31, 1977, Respondent East Texas issued Weed a warning letter for posting unauthorized material on the bulletin board. The material Weed posted was a letter to him from the Department of Justice and two of Brown's flyers.

The General Counsel contends that the March 31, 1977, consultation of Weed constituted the promulgation of an overly broad no-solicitation, no-distribution rule. Essentially the General Counsel goes beyond the scope of a classic no-solicitation, no-distribution rule. The General Counsel's attack is on the availability of the collective-bargaining agreement's authorized bulletin board and Respondent East Texas' breakroom, for the purposes of intraunion political activity. The General Counsel argues that where an employer enters into a collective-bargaining agreement which provides for the use by the contractual bargaining representative of any of the employer's facilities, here a bulletin board, that the agreement creates the law of the shop, which establishes a standard available to all employee organizational activities. Thus, the General Counsel contends that any subsequent attempt to limit employee use of the facility for any union activity is an overly broad no-solicitation, no-distribution rule. The General Counsel relies on *N.L.R.B.* v. *Magnavox Company of Tennessee*, 415 U.S. 322 (1974). In that case, the Court required a balancing of the legitimate interests of the prounion and nonunion groups in an organizational situation. Respondent East Texas argues that the language of the Brown propaganda posted and distributed by Brown and Weed is so inflamatory as to remove it from the protection of Section 7. Further, Respondent East Texas, in reliance on *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793, 797–798 (1945), and the cases following, argues that the balancing must be qualified by an employer's right "to maintain production or discipline."

On the basis of *Transcon Lines, supra*, I am constrained to find that the material in question to be sufficiently pertinent to intraunion politics and to management of the Union to be encompassed by Section 7 of the Act. Muckraking is a classic form of political propaganda; it does not exceed the limits of permissible conduct unless it is contrary to overriding policies of Federal labor law, is scurrilous or obscene, or incites violence. Although one piece of propaganda did make use of a highly offensive racial slur, this does not vitiate the entire campaign.

As distinguished from the usual no-distribution rule case; the bulletin board is the subject of collective bargaining. As a product of collective bargaining its purpose is related to the ongoing contractual relationship. It is a facility for the administration of the contract. Information on union business legitimately related to enforcement of the contract is authorized to be posted on the bulletin board. This is consistent with the contractual provision limiting posting to official union business. While there is evidence that death notices, flower collection notices, and thank you notes are posted, there is also evidence that Respondent East Texas removes notices of sales, commercial advertisements, propaganda, and union consumer boycott notices. There is no evidence that intraunion political propaganda supporting the incumbents in Respondent Local 745 has been posted. The posting of notices of election and notices of meeting is concluded to be insufficient to warrant that conclusion.

There is a significant factual difference between the present situation and that found in *Transcon*. Transcon had three bulletin boards: the company board, the union contract board, and the open "buy-sell-swap-miscellaneous" board. The indiscriminate use of the open board prevented the employer's restriction on its use by the intraunion minority. Here there is a single bulletin board. Respondent East Texas maintained control on its use. It does not support a comparable application here.

Under *Magnavox*, in an intraunion political situation, it follows that the employer must treat the competing groups even-handedly. Yet, it apparently has no duty to affirmatively provide both groups with a forum for intraunion political activity. Cf. *Columbia Broadcasting System, Inc.* v. *Democratic National Committee*, 412 U.S. 94 (1973). The contractual creation of a union bulletin board privilege does not establish a public wall for the posting at the employer's place of business of the propaganda of intraunion activity by all the potentially competing factions in the union. There is an area of exclusivity in the use of a contractual bulletin board by the contractual bargaining representative, which is appropriate, where the use is restricted to that reasonably cognizable with enforcement of the collective-bargaining agreement. Where that is done, and such is the case here, use of the bulletin board can be restricted to that purpose. Where the employer varies substantively from that, whether the union activity is for organizational purposes as in *Magnavox*, or for intraunion purposes as in *Transcon*, balancing and fairness require some accommodation to differing view points. That is the teaching of *Transcon*. Accordingly, in the absence of evidence that Respondent East Texas allowed the intraunion incumbents the use of the bulletin board to communicate their view points to the members of Respondent Local 745 employed by Respondent East Texas, the doctrine of balancing and fairness does not require Respondent East Texas to make the bulletin board available to the intraunion minority for that purpose. Considering the 350 employee-members employed by Respondent East Texas and the other 10,000 to 13,000 members of Respondent Local 745, to require Respondent East Texas to affirmatively provide a forum for the expression of viewpoints would be excessively burdensome on it.

The March 31 consultation with Weed details Lane's concerns that the bulletin board was for company business and contractually authorized union business; that the posting of outside materials disrupted the orderly conduct of business and interfered with business operations.

Historically, there is evidence of enforcement of the no-solicitation rule in the intraunion election campaign of 1975. Weed was given oral consultation in one instance and a warning letter in a second. R. Baker was also given an oral consultation and a warning. There is no evidence of prior oral consultations or written warning for posting materials on the bulletin board. It is concluded that Weed was given the March 31 warning letter because he violated the valid no-distribution (no posting) rule. Accordingly, I conclude that Respondent East Texas did not discriminate against him by issuing him a warning letter on March 31.

On May 11, 1977, Respondent East Texas issued Weed a warning letter because of his failure to follow company policy in obtaining the company doctor's work release and reporting to work 3 hours late. Because he was over 2 hours late, he was sent home. The evidence establishes that Weed did fail to follow the well-established company policy. It is noted that Weed had previously been required to follow the same procedure. There is no doubt that Weed was guilty of the deficiencies set out in the warning letter. Accordingly, I conclude that Respondent East Texas did not discriminate against Weed by issuing him a warning letter on May 11.

On May 25, 1978, Respondent East Texas issued Weed a warning letter because of his failure to follow company policy by signing his timecard. Weed and others had previously been counseled for failure to sign timecards. Other employees were also given warning letters for the same offense contemporaneously with Weed. There is no doubt that Weed was guilty of the deficiency set out in the warning letter. Accordingly, I conclude that Respondent East Texas did not discriminate against Weed by issuing him a warning letter on May 25.

On June 8, 1977, Respondent East Texas counseled Weed because he involved himself in a supervisor's consultation of another employee. The supervisor was investigating what he considered to be an employee's preventable accident. Weed stopped his own work and volunteered his evaluation of the situation. There is no dispute that the incident occurred. There is no doubt that Weed did not have the right to leave his own assignment and review the supervisor's work with him. Accordingly, I conclude that Respondent East Texas did not discriminate against Weed by counseling him on June 8.

On June 17, 1977, Respondent East Texas issued Weed a warning letter because of interruptions of work and low production. This is the same incident alleged as an oral consultation violation on June 16, 1977. On the basis of the evidence received, it is concluded that on June 16 Weed did perform as reported on June 16, 1977. Accordingly, I conclude that Respondent East Texas did not discriminate against Weed by counseling him on June 16 or issuing him a warning letter on June 17.

On June 22, 1977, Respondent East Texas counseled Weed because he failed to follow instructions about calling in when he had arranged for court leave. This was a trivial incident in Weed's long career; it was handled by Respondent East Texas as such. No warning letter was issued. No consultation report was placed in Weed's personnel file. Accordingly, I conclude that Respondent East Texas did not discriminate against Weed by counseling him on June 22.

On June 30, 1977, Respondent East Texas counseled Weed because of his talking to another employee who was on worktime. The evidence establishes that the incident occurred as reported. Accordingly, I conclude that Respondent did not discriminate against Weed by counseling him on June 30.

On July 13, 1977, Respondent East Texas counseled Weed because of his failure to properly prepare a tally of items in a shipment. The tally sheet prepared by Weed was not prepared in the manner required by company practice. Because of the manner in which the tally sheet was prepared, Respondent East Texas could not defend a claim of loss in shipment. The tally sheet was prepared in a manner meaningful only to Weed. It is difficult to understand how a longtime employee would not understand company practice on tallies of pieces in a shipment, or would insist on establishing and following a different procedure on his own. Accordingly, I conclude that Respondent did not discriminate against Weed in counseling him on July 13.

On July 28, 1977, Respondent East Texas counseled Weed for not going to his assigned workplace, for wandering around the dock and engaging in conversation. There is no substantial dispute on the facts. Although the incident was not a major incident, it was consistent with Weed's past practices at work. The threat of possible future discharge is reasonable on the basis of Weed's apparent refusal to follow rules and accept supervision. Accordingly, I conclude that Respondent did not discriminate against Weed in counseling him on July 28.

On August 10, 1977, Respondent East Texas discharged Weed because he was engaging in solicitations of money while he was supposed to be working. The record reflects a long history of Respondent East Texas' problems with Weed because of a propensity to engage in discussions when he was supposed to be working. Previous consultations and warning letters to Weed relate to similar conduct. Throughout the period of his employment Weed appears to have claimed the right to engage in conversation at work. This is reflected in his grievance on the February 24, 1976, incident where Weed claimed that "there is nothing in the contract that says anyone cannot talk as long as he performs along," and that, "I was suspended without cause because there is no complaint about my work, just that I talk to[o] much which is my constitutional right as long as I do not cause anyone any trouble and I am going to have my say, also, when I get into Federal Court." This is also evidence that Weed misperceives his relationship with his employer and reserves to himself the right to determine his own conditions of employment. Despite Weed's claim of right, it is axiomatic that Respondent East Texas has the right to determine the rules of employee performance in the workplace as long as those rules are not discriminatory in content or application.

As early as November 1975, Respondent East Texas had enforced policies against solicitation by employees in work areas and on worktime. At that time the rule was applied in a nondiscriminatory manner against supporters of both factions of the intraunion campaign. Both Weed and R. Baker were counseled and issued warning letters for the same types of offenses. The application of the policy against solicitation on company time and in work areas was reemphasized in June 1977, when King and Moore were counseled about solicitations on the dock during worktime. Contemporaneously with that incident, the rule was posted prohibiting solicitation in working areas on company time.

It was in this context that the ultimate confrontation occurred between Weed, a rugged individualist, and the employer about established standards of the workplace. Brookins was discharged in early July 1977, for excessive absences (a discharge for cause as ultimately determined by the Southern Multi-State Grievance Committee). Brookins filed his grievance. The hearing was scheduled for August 1977. On August 9, 1977, Weed informed employees in the breakroom before the workday began that he would be taking up a collection for Brookins. The collection was to provide him with money to pay his expenses to the grievance hearing in Biloxi, Mississippi.

Immediately after they began work Weed solicited employee Gary Nelson while they were working.[16] This was in the presence of Foreman Bailey. Later in the breakroom Sims, who had seen Weed's solicitations that day, cautioned him not to take up the collection "on company time or in work areas." Later on the dock, Sims was in Weed's work area. Weed solicited a contribution from Sims. Again he was cautioned. Still later, at or about 7 p.m. Weed approached and solicited employee Blount in a work area on company time. Blount obtained some change. Then Weed had him go down off the dock and hand the money up to Weed who remained on the dock.[17] Weed accepted the contribution.

The following day R. Baker accosted Lane in a loud voice complaining about Lane's disparate treatment. He cited the June situation and the present apparent acquiescence in Weed's solicitations on the dock on company

[16] Of course, Weed's interpretation of solicitation as requiring the exchange or passing of some item must be rejected. Solicitation in this context means to request or to ask for something or some act.

[17] It must be recognized that this charade violated even Weed's definition of solicitation. It appears that, in classic sea lawyer tradition, Weed rationalized the devise as a means to avoid the impact of the rule against solicitation "on the dock." As it develops the evasion did not work. It is, in fact, conclusive evidence that Weed knew he was violating the rule and was subject to punishment if caught.

time. Lane agreed to investigate. Shortly, employee Blount came forward and confessed to the previous night's incident.

Superficially this may appear to be an attempt by Respondent Local 745 to cause Weed's discharge. Yet, in a confrontation situation such as this, there is a requirement of evenhandedness. The rights of the intraunion minority do not negate the rights of the majority. The standard of equality of treatment, as in an organizational situation, imposes on the employer the requirement that he not grant special privilege to either competing group. The grant to one and the denial to the other would be "interference" within the meaning of Section 8(a)(1). There is no evidence that R. Baker asked for Weed's discharge or that, under the contract, he would have been authorized to speak for the Union in his capacity as assistant steward. Rather, it appears, he sought some measure of fairness. Respondent East Texas' decision to discharge only develops later.

On the basis of the complaint and confession, Lane made an investigation and decided to discharge Weed. Respondent East Texas discharged Weed on August 10 for "abusing time" and "interfering with other people's work." This was formally restated in the letter of August 12, which cited his previous warnings and consultations (March 31, June 8, and 30, and July 28) and gave as grounds for discharge, "for disrupting the work force . . . abuse of time . . . and failure to follow instruction," and the August 9 incident of spending "portions of [the] entire shift in soliciting funds for a fellow employee resulting in . . . poor production . . . ." Weed filed a grievance and one of the present charges.

It is beyond cavil that, on August 9, Weed knowingly violated Respondent East Texas policy on solicitations in work areas on company time. Respondent East Texas became aware of the violation, although possibly not the extent of the violation, by the end of the discharge interview of August 10. This was reinforced by the time of the issuance of the discharge letter on August 12. The no-solicitation rule was valid. Weed had on previous occasions, as early as November 1975, been counseled and warned about such solicitations, abuse of time, and disrupting the work. Weed had received a number of valid consultations and reprimands in the period immediately preceding August 9. There is no evidence that any other employee had ever been discharged for the same or similar offenses, but other employees had been counseled and warned during the period beginning November 1975. Further, there is no showing that any employee with a work record comparable to Weed's had ever been guilty of as many similar offenses. Additionally, while Weed was active in intraunion affairs, this alone does not mandate a finding of discriminatory discharge. Union activities do not insure an employee from discharge for cause. Here, there is substantial good cause for discharge. Accordingly, it is concluded that Respondent East Texas did not discriminate against Weed by discharging him on August 10.

Despite the conclusion that Weed's discharge was for cause and not discriminatory, some consideration of the grievance-arbitration procedure is appropriate. Weed is determined to have voluntarily consented to deferral of his charges against Respondent East Texas. The General Counsel's claim of Weed's "hesitancy" is rejected. There is no evidence that representatives of the Regional Office in any way coerced or misled Weed. Weed concedes this. The evidence reflects that Weed's rights were explained to him and that he knowingly and voluntarily signed the agreement for deferral pursuant to *Dubo Manufacturing Company*, 142 NLRB 431, and *General American Transportation Corporation*, 228 NLRB 808. Weed's present hesitancy appears to be an afterthought developed from the results of the grievance-arbitration procedure.

The question remains whether a union can ever represent an intraunion minority member in a grievance-arbitration procedure in a manner which satisfies the standards of *Spielberg Manufacturing Company*, 112 NLRB 1080, and *Electronic Reproduction Service Corporation, et al.*, 213 NLRB 758 (1974). The General Counsel argues that *Electronic Reproduction* is distinguishable.[18]

The General Counsel concedes that joint employer-union arbitration panels without neutral arbitrator participation are valid arbital panels under *Spielberg* and *Electronic Reproduction*. The General Counsel does argue against the makeup of the panel as follows:

> It is argued that Smith, by his association with Haddock on the policy committee of the Southern Conference, and by his personal friendship with Haddock, had knowledge of Weed's association with Vestal. This cannot and [sic] "an appearance of fair and regular" to the questioned proceedings.

The record of the proceedings before the grievance-arbitration committee and the record in this case do not support the argument. While the record reflects that Vestal may be a gray eminence to Weed, Nichols and Brown, and that Vestal has had prior problems with the Teamsters International in which Smith participated, it is only speculation on the General Counsel's part that Haddock discussed with Smith Weed's relationship with Vestal. Such speculation is not a valid basis of attacking the appearance of fairness and regularity of the arbitral hearing. Further, the General Counsel misconstrues the requirement of the appearance of fairness and regularity and argues that over and above fairness and regularity there must also be the additional appearance of the qualities, as in the case of Caesar's wife. The Board recognized that affirmative proof of fairness and regularity would seldom be possible, and agreed to accept a lesser standard that there be an appearance of fairness and regularity. To overcome this *appearance* requires more than an attack on the image, it requires an attack on the substance of fairness and regularity.

The General Counsel also attacks the failure to allow Weed to cross-examine the witnesses for Respondent East Texas. This was during the investigation of the grievance prior to the hearing before the Southern Multi-States Grievance Committee. Weed agreed that

[18] The General Counsel's alternative argument that consideration of the question is appropriate because of the change of the "Board's complexion" is rejected.

Assistant Business Agent Moore could represent him. Weed wanted to participate personally in the investigation. This was not accomplished. It is concluded that there was no ulterior motive in Weed's not being present at the investigation. It was because Weed could not be reached. Weed's representative did participate in the investigation and was allowed to examine witnesses. Upon Weed's complaint, the grievance committee allowed Weed to submit statements taken by him when no representative of Respondent East Texas was present.

There is no evidence of any deficiencies in Moore's participation in the grievance investigation. There is no evidence of what Weed would have attempted to develop by cross-examination had he participated. Under the circumstances the failure to provide Weed with the opportunity to cross-examine witnesses, where his designated representative has been allowed to, does not invalidate the grievance-arbitration procedure.

The General Counsel also argues that the decision of the grievance committee was repugnant to the Act because Weed was discriminatorily discharged. In view of my previous findings this is rejected.

The final attack raised by the General Counsel is to fairness in consideration of the issues by the panel. The unfair labor practices clearly could have been raised before the panel. Weed attempted to raise these issues. His attempt to raise the issue of discrimination because of his intraunion political activities was rejected. The seriousness of consideration of the unfair labor practice issues was not developed further either in the record of the grievance hearing or in the grievance award.

Under the circumstances, were I to decide the unfair labor practice issues differently in this case, I could not conclude that the panel award decided the unfair labor practice issues which the Board would be called upon to decide in this case. *The Kroger Company*, 226 NLRB 512, 513 (1976), and *Clara Barton Convalescent Center, etc.*, 225 NLRB 1028 (1976).

The ultimate question on the grievance-arbitration procedure of the prejudice of the panel relates to the policy question of the rights of a dissident. Here Weed was a leading dissident. There were then pending after-complaint meritorious unfair labor practice charges filed by Weed against Respondent Local 745. The settlement of Weed's charges had not been approved by the Regional Director. While the General Counsel concedes the validity of a joint employer-union grievance panel, still the absence of an independent arbiter in this unique situation weighs heavily. Under such circumstances where the grievance-arbitration hearing is not before an independent arbitrator, and the grievant, an identified dissident, is a party to existing unfair labor practice litigation against the grievant's bargaining representative, the Board's exercise of discretion, not to defer, is appropriate. Cf. *The Mason and Dixon Lines, Inc.*, 237 NLRB 6 (1978). The question here, on the basis of my conclusions, is immaterial because of Weed's warnings and discharge for cause.

E. *Johnie Fink*

The Johnie Fink charge is an isolated situation completely unrelated to the great mass of this case. There is no showing that Fink is an adherent of the intraunion minority or is a participant in any of the other activity detailed in this case.

Johnie Fink was a city driver at Respondent East Texas. He had a heart attack and open heart surgery. Upon his attempt to return to work as a city driver, he was rejected by Respondent East Texas. His rejection was because he was unable to meet the standards of a Department of Transportation physical examination. It was an established policy of Respondent East Texas that all employees who operated equipment had to pass a DOT physical. Fink filed a grievance seeking to return to work as a city driver and to be reimbursed for time lost between his attempt to return to work and any reinstatement. The grievance was settled between Fink and Respondent East Texas. The settlement provided that Fink would be reinstated as a city dock employee, not as a driver, and that no lost time would be paid. Fink was assured of a job as city dockman as long as he wanted it.

Immediately after reinstatement Fink partially repudiated the grievance settlement by filing a grievance seeking the lost time. Respondent East Texas apparently regarded this as a material breach. Upon being confronted with the position of Respondent East Texas that they would not concede that lost time should be paid, Fink withdrew the grievance. Fink continued to work as a city dockman throughout the period beginning in October 1976.

In December 1977, Fink received an ICC card showing him to be physically qualified to drive. The card was apparently issued by error. He showed the card to Ted Lane, the terminal manager. Lane concluded that this was portending a second attempt to rewrite the terms of the grievance settlement. Upon reevaluation of his most recent physical, Fink was again rejected because of his EKG results.

In a conversation about January 6, 1978, Lane told Weed that, if he grieved over the city driver's position, he and other employees would be sent back for physicals "to be turned down." The statement was based on the existing situation where Respondent East Texas had made comparable arrangements with other employees on its payroll. Some of these arrangements were pursuant to grievances.

The statement by Lane is regarded as a threat to affect the employee status Fink and others if Fink pursued his grievance action in an attempt to become a city driver. There is no doubt that Lane was upset by what he considered Fink's duplicity. Nevertheless, this is not justification for a threat to affect the tenure of Fink and the other employees.

In reaching this conclusion it should be clear to all parties, including Fink, that this does not change his status as an employee of Respondent East Texas. He is still reinstated under the October 1976 grievance settlement. I am not concluding that he is or is not medically qualified to be a city driver. That would be a matter for the company doctor and any grievance pursuant to article 47 of the collective-bargaining agreement. The issues to be considered by the Southern Multi-State Grievances Committee, in the case of any such grievance, are mat-

ters to be determined by that body. This could well include the binding effect of the prior settlement.

IV. THE REMEDY

Having found that Respondent Local 745 has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and from or in any like or related manner infringing on the Section 7 rights of employees and members, and to take certain affirmative action designed to effectuate the policies of the Act. Having also found that Respondent East Texas has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom or in any like or related manner infringing on the Section 7 rights of employees, and to take certain affirmative action designed to effectuate the policies of the Act.

Both Respondents seek reimbursement for costs by the General Counsel. Even if the circumstances of the case were appropriate for such an order, I find no authority to recommend that remedy. Where both respondents are found to have engaged in unfair labor practices, this is further no basis for such a remedy.

CONCLUSIONS OF LAW

1. Respondent East Texas is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Local 745 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Local 745 has violated Section 8(b)(1)(A) of the Act by the following:

(a) By failing to make reasonable efforts and to take reasonable steps to ensure the security of its union meeting hall premises and area, to assure the safety of members, including those of the intraunion minority, attending union meetings, and to guarantee the rights of members, including those of the intraunion minority, to participate freely in intraunion activities.

(b) By making veiled threats to members of the adverse consequences of activities as a member of the intraunion minority and failure to support the intraunion majority.

4. Respondent East Texas has violated Section 8(a)(1) of the Act by threatening employees with adverse consequences affecting tenure and terms and conditions of employment if the employees file or process grievances over wages, hours, and other conditions of employment.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. The Respondents have not violated the Act in any manner not expressly found herein.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[19]

A. Respondent International Brotherhood of Teamsters, Dallas General Drivers, Warehousemen and Helpers, Local 745, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Failing to make reasonable efforts and to take reasonable steps to ensure the security of its union meeting hall premises and area, to assure the safety of members, including those of the intraunion minority, attending union meetings, and to guarantee the right of union members, including those of the intraunion minority, to participate freely in union activities, including meetings, without fear of threats, intimidation, and violence.

(b) Making threats to members of the adverse consequences of activities as a member of the intraunion minority and the failure to support the intraunion majority.

(c) In any like or related manner restraining and coercing employees and members in the exercise of their rights under the National Labor Relations Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its business offices and meeting places copies of the attached notice marked "Appendix A."[20] Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by its authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken to ensure that said notices are not altered, defaced or covered by any other material.

(b) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

B. Respondent East Texas Motor Freight, Dallas, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with adverse consequences affecting tenure and terms and conditions of employment if the employees file or process grievances over wages, hours, and other conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights under the National Labor Relations Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its Dallas, Texas, terminal copies of the attached notice marked "Appendix B."[21] Copies of said

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[19] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[20] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[21] See fn. 20, *supra.*

notice, on forms provided by the Regional Director for Region 16, after being duly signed by its authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board having found, after a hearing, that we violated the National Labor Relations Act, we hereby notify you that:

WE WILL NOT fail to make reasonable efforts, and to take reasonable steps, to ensure the security of union meeting hall premises and area, to assure the safety of members, including those of the intraunion minority, attending union meetings, and to guarantee the rights of members, including those of the intraunion minority, to freely participate in intraunion activities.

WE WILL NOT threaten employees with the adverse consequences of activities as a member of the intraunion minority and the failure to support the intraunion majority.

WE WILL NOT in any like or related manner restrain and coerce employees in the exercise of their rights under the National Labor Relations Act.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, DALLAS GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 745